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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(Southern Division)

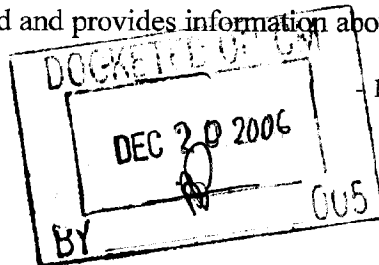
JOSE L. ACOSTA, et al.,
Plaintiffs,
v.
TRANS UNION, LLC, et al.,
Defendants.

Case No. 06-cv-5060 DOC (MLG)

**DECLARATION OF DAVID A. SZWAK IN SUPPORT OF
WHITE/HERNANDEZ
PLAINTIFFS' OPPOSITION TO
THE ACOSTA/PIKE PLAINTIFFS'
MOTION FOR AN ORDER
GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT**

Date: January 22, 2007
Time: 8:30 a.m.
Place: Courtroom 9D
Judge: Honorable David O. Carter

1. I am an Attorney in Shreveport, Louisiana, and practice in the law firm of Bodenheimer, Jones & Szwak, LLC. A copy of my current CV is attached and provides information about my background including articles I



DECLARATION OF DAVID A. SZWAK
Case No. CV 06-05060 DOC (MLG)

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1 authored and lectures I have presented. I have written extensively in the field of
2 Fair Credit Reporting Act [FCRA] litigation. I am regularly asked to teach
3 seminars, CLE and other educational training in the field. A major part of my
4 practice involves consumer credit litigation involving the Fair Credit Reporting Act
5 and activities of the consumer [credit] reporting agencies.

6 2. I have been retained by Plaintiffs' counsel in White, et al. v.
7 Trans Union, LLC and White, et al. v. Equifax to offer an opinion as to the
8 underlying credit reporting mechanics of the proposed settlement in this case,
9 Acosta v. Trans Union. I have been asked to explain the manner in which Trans
10 Union and Equifax will of necessity implement the terms of the proposed reporting
11 changes required in the settlement. Having litigated extensively in this field under
12 the Fair Credit Reporting Act [FCRA], 15 U.S.C. 1681, et seq., against Trans Union
13 and Equifax, I have also been asked to render an opinion as to the adequacy of the
14 litigation and discovery conduct by Plaintiff's counsel in this case.

15 3. I attained a Bachelor of Science in Quantitative Business
16 Analysis from Louisiana State University. That degree program and my studies
17 included computer programming, operations research, computer logic, database
18 design, information practices, database construction and maintenance, digital logic,
19 statistics, as well as a number of other disciplines helpful to the understanding and
20 assessment of issues in credit reporting actions. Further, I have handled thousands
21 of matters assisting consumers and businesses in understanding credit reports,
22 credit extension practices, assessing the ability to correct credit and credit reporting
23 errors, assessing credit reporting policies and procedures, and evaluating collection
24 and credit reporting records and computer files. I continuously study, document
25 and report on the operations and processes of the credit and credit reporting
26 industries. The opinions I express herein come from my personal knowledge I have
27 obtained through these experiences and education. I have handled roughly 100 or
28 more cases against these defendants, Equifax and Trans Union, over the past 15

1 years, in various venues across the nation. I have handled roughly 100 or more
2 cases against these defendants, Equifax and Trans Union, over the past 15 years. I
3 have engaged in extensive discovery with these defendants, including examination
4 of their search program functions, data codings, data structures, data archival
5 structures, all internal manuals, systems analysis flow diagrams, and metro tape
6 structures. I have also deposed numerous witnesses in the companies' structures.
7 Most of the discovery accomplished in such matters was under the governance of a
8 protective order, usually demanded by the reporting agency. I am careful not to
9 violate those orders.

10 4. I have previously testified by affidavit, report and/or deposition
11 in a number of other cases involving issues under the Fair Credit Reporting Act
12 [FCRA] and involving the credit reporting, credit card and banking industries. I
13 have also attached hereto a copy of my expert witness case listing for your review.
14 I have agreed to provide my unique expertise at an hourly rate of \$350.00 per hour
15 for non-testimonial consultation, review and advice, and \$500.00 per hour for my
16 deposition and court testimony. Those fees do not include my expenses which are
17 separately itemized.

18 5. Also attached hereto is a Statement of Facts provided to me by
19 Leonard Bennett, counsel for the Plaintiffs in White, et al v. Trans Union, LLC, and
20 White, et al v. Equifax Information. I have relied on this Statement of Facts in
21 rendering my opinions herein.

22 6. The other documents I specifically reviewed in connection with
23 my declaration include: Documents Bates Labeled TUWHAP0001-0410
24 [D.Bradley letter, 7-16-2003 and attachments; P.Recchia letter, 6-24-2003; FRCP
25 26[f] Report; Recchia In-House memo; G.Pietro letter, 3-18-2005; JDR Fax and
26 attachments, 3-29-2005; L.Sherman letter, 1-20-2006; JAMS letter and
27 attachments, 3-17-2006; Stipulation; numerous emails between counsels; JAMS
28 letter and attachments, 2-23-2006; L.Sherman letter and attachments, 2-13-2006;

1 Memorandum of Understanding re: Settlement of Acosta v. Trans Union; JAMS
 2 letter and attachments, 5-31-2006; B.Frontino letter and attachments, 5-12-2006;
 3 JAMS letter and attachments, 4-21-2006; Settlement Term Sheet; B.Frontino letter,
 4 7-20-2006; JAMS letter and attachments, 8-3-2006; D.Wright letter and
 5 attachments, 5-6-2006; L.Sherman letter, 7-14-2006; Supplementatio n to MOU, 9-
 6 14-2006; JAMS letter and attachments, 9-8-2006; Executed MOU, 9-7-2006;
 7 Confidential Mediation Brief of Trans Union and attachments; Documents Bates
 8 Labeled TUWHAP0411-0952 [Group 1 documents; Group 2 documents; Group 2
 9 documents, part 2; Group 2 documents, part 3; series of discovery requests by
 10 Trans Union to plaintiff; Plaintiff's responses to Trans Union's written discovery
 11 and attachments]; Documents Bates Labeled TUWHAP0953-1409 [Supplemental
 12 Responses to Trans Union's Requests For Production of Documents and
 13 attachments; Plaintiff's Form Interrogatories to Trans Union; Trans Union's
 14 responses to Responses to Form Interrogatories; Plaintiff's Non-Form
 15 Interrogatories to Trans Union; Plaintiff's Special Interrogatories to Trans Union;
 16 Trans Union's Responses to Plaintiff's 2nd Special Interrogatories to Trans Union;
 17 Trans Union's Supplemental Responses to Plaintiff's 2nd Special Interrogatories to
 18 Trans Union; Plaintiff's 3rd Special Interrogatories to Trans Union; Trans Union's
 19 Responses to Plaintiff's 3rd Special Interrogatories to Trans Union; Trans Union's
 20 Responses to Plaintiff's 2nd Special Interrogatories to Trans Union; Trans Union's
 21 Responses to Plaintiff's Requests For Production and attachments; Plaintiff's
 22 Requests For Production to Trans Union; Plaintiff's 2nd Requests For Production
 23 to Trans Union; Trans Union's Responses to Plaintiff's 2nd Requests For
 24 Production and attachments; Plaintiff's 3rd Requests For Production to Trans
 25 Union; Trans Union's Responses to Plaintiff's 3rd Requests For Production and
 26 attachments; Plaintiff's 4th Requests For Production to Trans Union; Trans Union's
 27 Responses to Plaintiff's 4th Requests For Production and attachments; Plaintiff's
 28 5th Requests For Production to Trans Union; Trans Union's Responses to

1 Plaintiff's 5th Requests For Production and attachments; Plaintiff's Requests For
 2 Admissions to Trans Union and attachments; Trans Union's Responses to
 3 Plaintiff's Requests For Admissions to Trans Union and attachments; Plaintiff's
 4 2nd Requests For Admissions to Trans Union and attachments; Trans Union's
 5 Responses to Plaintiff's 2nd Requests For Admissions to Trans Union and
 6 attachments; Plaintiff's Supplemental Requests For Production to Trans Union;
 7 Trans Union's Responses to Plaintiff's Supplemental Requests For Production;
 8 Plaintiff's Supplemental Interrogatory to Trans Union; Trans Union's Responses to
 9 Plaintiff's Supplemental Interrogatory; Documents Bates Labeled TUWHAP1410-
 10 1917 [which included TU00001-00079] [D.Terry, Trans Union, depo. 12-2-2004
 11 and attachments; S.Reger, Trans Union, depo. 2-8-2005 and attachments]; R.Mann
 12 Affidavit, 11-17-2006; Notice of Motion and Motion For an Order Granting
 13 Approval of Stipulated Class Action Settlement, etc., ad attachments; Kirkpatrick v.
 14 Equifax, trial transcript; Hudgins v. Equifax, Complaint; Bright v. Equifax,
 15 Complaint; Hunter v. Equifax, Complaint; Crowe v. Equifax, Complaint; T.Corpuz,
 16 Declaration; Plaintiff's interrogatories and requests for production to Equifax and
 17 Equifax's responses and attachments thereto; Equifax's interrogatories and requests
 18 for production to plaintiff and plaintiff's responses and attachments thereto; L.Dijk,
 19 FICO, deposition and exhibits, 12-17-2003; Equifax frozen scans in Pike v.
 20 Equifax; A.Fluelen, Equifax, deposition and exhibits, 5-19-2005; Equifax
 21 Indicating Manual; A.Fluelen, Equifax, deposition and exhibits, 10-23-2003;
 22 J.Acosta, deposition and exhibits, 12-8-2003; D.Pike, deposition and exhibits, 5-31-
 23 2005; Equifax Initial Disclosures and attachments, #0001-0144; Equifax Subscriber
 24 Agreement.

25 7. I am also familiar with credit reporting agencies' processes and
 26 procedures through interrogating and otherwise deposing agencies and its
 27 employees and from reviewing a very large number of contracts, publications,
 28 records, manuals and other writings of the agencies and their affiliate bureaus.

1 These include metro tape 1 and 2 format manuals, credit reporting policy and
2 procedure manuals, public records reporting manuals, reinvestigation manuals, data
3 deletion and suppression documents, data retention and archival processes, CDV
4 and ACDV processes, UDF and AUDF processes, policy and procedure manuals in
5 consumer relations and other such materials published by the agencies and their
6 affiliated credit bureaus.

7 8. Bankruptcy reportings originate from the public record and from
8 lender trade line reportings. On the public record side, clerk of courts may report
9 and transmit to the agencies the bankruptcy information in the standardized Metro
10 Tape reporting format for bankruptcy data. If the clerk does not have a cooperative
11 agreement to provide that data to the national credit reporting agency, then the
12 agencies routinely employ public records data vendors who travel to the courthouse
13 and record public records information from the face of the public records and then
14 the vendor types the data into a metro tape format and transmits the data to the
15 agency[ies]. The incoming public records posting, regardless of the manner of
16 initial collection and transmittal, will eventually be received by the credit reporting
17 agency, who screens the data for basic glitches and then uploads the standardized
18 data submissions to the credit reporting database. Based on indicative information
19 [consumer personal identifiers] associated with each reporting data string, the data
20 will be matched and posted to file as credit reports and disclosures are assembled
21 and maintained.

22 9. The second type of bankruptcy reporting is the "included in
23 bankruptcy" [AIIB] and similar comment fields which lenders, collectors and other
24 trade and collection account "furnishers" attach to account reportings. This is not
25 what we typically term a "public records" posting. This "comment" is appended to
26 a specific trade line [account] that normally was being reported by the furnisher
27 before the consumer went into bankruptcy. The furnisher normally updates its
28 monthly [periodic] reporting of that trade to enter a "status code" in the proper

1 metro tape field affiliated with that trade so that the AIIB [or related comment] will
2 post and display as associated with the specific trade on the report. Again, these
3 comments are manually [normally] engaged by inclusion of the comment by the
4 furnisher. Some furnishers who have experienced high volumes of bankruptcies
5 have attempted to develop an automated screen of public records for consumers
6 who have filed bankruptcy for comparison to indicative information in their files in
7 order to trigger an automatic [non-manual] inclusion of a bankruptcy comment to
8 trades but this type of test system has proven flawed for a number of reasons. The
9 bottom line is that in the trade reporting metro tape fields, there are bankruptcy
10 comment fields which can be engaged to cause standardized and free form text
11 messages to display, depending on options available and the desires of the furnisher
12 to add commentary to the trade display on the reports of the subject consumer. As
13 with any item of information in file, the individual indicative information
14 determines how that item of data is matched to a specific file and consumer.

15 10. Trade/account and collection data is reported to Equifax and
16 Trans Union by their subscribing customers, the furnishers, in an alpha-numerically
17 coded format, Metro Tape 1 and Metro Tape 2, created by the national reporting
18 agencies through the trade group, now known as the Consumer Data Industry
19 Association (CDIA). The original title to the manual detailing for furnishers how to
20 use the Metro Tape 2 format was titled, "Metro 2 Format for Consumer Credit
21 Reporting." The Current manual is titled, "Credit Reporting Resource Guide." The
22 Metro Tape 2 format requires creditor/collection data to be reported to the agencies
23 in one line of code per account, each line segments from left to right by an assigned
24 number of spaces per field. For example, name, account number, payment history
25 and a great number of other items, each assigned to a fixed number of spaces in the
26 same order for every account.

27 11. Metro Tape 2 data is reported in "segments." The first, the
28 "Header" segment [not the same as credit file "header data" which is names and

addresses of consumers] is a single item reported with a group of separate account files. It tells the agencies the details about who is reporting that batch of files and how. There are some other misc. segments that are also largely irrelevant [for example, a co-debtor will have a separate "J1 Segment" added]. The key reporting segment is the "Base Segment," which is the line of characters for a single credit or collection account. It contains all of the account specific data. There are two lengths for Metro Tape 2 Base segments, 366 and 426 characters. For example, in the 366 Base Segment, spaces 183-207 contain the consumer's surname; 208-227 the middle name; 249-253 the social security number; 356-364 the zip code; etc.

12. Under the Metro and Metro 2 formats, the agencies are able to determine the type of trade account being reported. There are several reporting features that permit this. The subscriber code, for example, is a key to the Kind of Business [KOB code] reporting the specific item of information. Debt collectors [For ex., Equifax code "YC"] have differing codes from banks [Equifax code "BB"], from insurers [Trans Union code "I"], and from car dealers, etc. The KOB code is an important element built into the agency coding to help it differentiate furnishers without having to completely "decode" the entire subscriber code. The subscriber code also contains geographic information, built into the individual subscriber code string, about the subscriber. There are a number of these KOB codes which are very specific as to the separate industries reporting data. Other examples of coding information is highlighted on an affiliated credit bureaus' sites: www.cbainfo.com/glossary.html [comprehensive code listings]; www.coastalcredit.com/html/creditreporttutorial.html; www.accuratecredit.com/html/tutorial-equifax.html. Also, bureau vendor's explain these codes: http://creditengine.net/equifax_format.htm; http://creditengine.net/transunion_format.htm.

13. Further, General Codes and other account coding is built into the Metro Tape reporting sequences to enable the agencies and other users [subscribers

1 viewing reports] to understand detailed information about the kind and nature of the
2 accounts being reported in the credit report file. General codes describe the nature
3 of the account transaction and security or lack thereof. The Type of Account codes
4 describe if the trade is a mortgage, revolving, installment, open or other type of
5 account. The ECOA designator describes precisely "who" is responsible for the
6 account. It may be individual liability, joint, authorized user, co-signor, etc. There
7 are numerous sets of data fields with countless potential codes which may be
8 entered and each code translates into a text message detailing specific information
9 about the account. There are also multiple Public Records Codes which detail out a
10 number of bankruptcy related scenarios on the public records postings. Metro Tape
11 2 has a list of account type codes. These are reported by furnishers in Metro 2 Field
12 9 [Spaces 68-69], under the heading Account Type. Relevant to the present case,
13 these account type codes identify everything that would be needed to identify
14 whether a trade/account is one of those narrow categories that may not be
15 discharged. For example, while certain types may be clearly discharged [01
16 unsecured loan, 07 charge account, 18 credit card, 90 medical debt], others are
17 easily identifiable as likely not discharged [12 Education loan, 22 and 23 secured
18 by household goods, 50 and 93 child and family support, 65-74 various government
19 obligations including 71 for fines and penalties, and various codes for types of
20 mortgage debt].

21 14. After my review of all facts, I believe that the proposed
22 settlement in the Acosta case is inadequate.

23 15. The proposed Acosta settlement would not correct the targeted
24 inaccuracies. The proposed settlement would only require correction of a narrow
25 subset of the types of inaccuracies faced by consumers after they obtain a
26 bankruptcy discharge, which is designed to provide protections and a fresh start.

27 16. The proposed settlement creates a new and unique term "BQT"
28 which it defines as a Revolving [Type of Account code: "R"; distinguished from all

1 other types of accounts] account with a Chargeoff or Collection status [Rate Code
 2 "9"; distinguished from all other codes 0-8 and other "9" codes which are not
 3 specified as charge-off or collection] reported before the bankruptcy discharge.
 4 While this description may appear to be expressed in laymen's terms, it actually has
 5 specific meaning in the context of credit reporting that was probably not known or
 6 fully understood by Acosta counsel. This has a specific meaning within industry
 7 jargon. Trans Union and Equifax certainly choose this language to greatly narrow
 8 the actual changes which would be required of their systems and to limit the
 9 protection provided the class members.

10 17. The term "Revolving account" means a credit account trade
 11 which is coded with the Portfolio Type field in Metro 2 identifying the "Type of
 12 Account" coded as "R" in Metro 2 Field 8 (Space 67). But this definition thus
 13 excludes from correction all other credit account/trade which are not coded in this
 14 fashion including those coded:

15 C= Line of credit;

16 I= Installment credit;

17 M= Mortgage; and

18 O= Open account.

19 18. The settlement correction would not include any of these other
 20 reported credit types.

21 19. It should specifically be noted that "BQT" [Bankruptcy
 22 Qualified Trade] is not industry jargon and is a phrase created solely within the
 23 context of the proposed settlement.

24 20. By definition, the Acosta proposed settlement, limited to its
 25 "BQT's," would not correct and would exclude lines of credit, installment credit
 26 such as car loans, discharged mortgage deficiencies, open accounts and other non-
 27 revolving accounts. It would also exclude debts that are not reported as an

1 account/trade, such as pre-discharge judgments and various collection accounts,
2 such as medical billing collections.

3 21. The "BQT" also only includes trade lines from this narrow
4 subset of revolving account types which are reported with a "Charge-off" or
5 "Collection" status, with a "9" Rating Code.

6 22. Metro 2 Field 17A (Spaces 99-100) provides for the Account
7 Status reporting. There are a number of different account status codes in data
8 reported within the industry's standard Metro 2 format. While it is customary to
9 see a consumer version [plain language, decoded] credit report with such coding as
10 "R-9" for charge-off of a revolving account or "R-1" for a revolving, current
11 account, these are really just MOP [Method of Payment; listing Type of Account
12 and Account Status together as MOP Coding] summary codes used by Trans Union
13 and Equifax in their readable, end-user reports. The internal coding in which this
14 data is reported and maintained is by the Metro Tape 2 "Account Status" code and
15 separately the "Type of Account" code. For example, a creditor who wants to
16 report an account as 30 days late/delinquent uses code "71;" 60 days late uses code
17 "78," 90 days late uses code "80," 120 days late uses "82," 150 days late uses "83,"
18 and 180 days or more past due uses "84" for a status code. In addition to these and
19 the below, there are also codes for repossessions, foreclosures, current accounts,
20 and others.

21 23. The only changes that the Acosta settlement would make would
22 be to credit card accounts with a pre-discharge reporting of an Account Status code
23 "97" ["Unpaid balance reported as a loss by credit grantor (charge-off)"] or Account
24 Status "93" ["Account assigned to internal or external collections."]. This will
25 leave uncorrected countless consumers who fit within the large number of other
26 scenarios, for ex., current, 30+, 60+, 90+, 120+, 150+, 180+, involuntary
27 repossession, foreclosure, voluntary repossession, deed in lieu, etc. These are all
28 scenarios that will exist in the credit files of class members in this case.

1 24. The "BQT" language will expressly exclude accounts [from
2 even this narrowest of subsets] that are not so reported until after the bankruptcy.
3 Many of the inaccuracies faced by consumers post-discharge are actually reported
4 inaccurately post-bankruptcy and not pre-discharge.

5 25. The asserted changes to the agencies' reinvestigation procedures
6 under the Acosta proposed settlement are also meaningless. The proposed
7 settlement would purport to require the agencies to correct trades/accounts to an
8 "unrated" Account Status or an "included in bankruptcy" [comment] after a dispute
9 without the need to verify the reporting with the underlying furnisher-creditor.
10 Although the Sherman Group may not have even known it, it should be noted that
11 this is currently the procedure used by Equifax and Trans Union. If the consumer's
12 credit file already listed a bankruptcy public record posting that is inconsistent with
13 the disputed trade/account comment, upon the consumer's dispute the agencies'
14 procedures call for it to update the trade/account without the need to contact the
15 creditor and report consistent with the public records. The actual bankruptcy papers
16 will not be required if the consumer's dispute is consistent with the other
17 information already in the consumer's credit file.

18 26. The problem is not in the agencies' procedures or business rules
19 for considering a consumer's dispute but the agencies' reinvestigation failures
20 principally arise from the agencies' failure to allocate adequate resources to such
21 reinvestigation functions. See, for ex., Cushman v. Trans Union, 115 F.3d 220 [3rd
22 Cir. (Pa.) 1997]. ["Similarly, the jury could have concluded that seventy-five cents
23 per investigation was too little to spend when weighed against Cushman's
24 damages."]; Comparably: Centuori v. Experian Information Solutions, Inc., 431
25 F.Supp.2d 1002 [U.S.D.C. Ariz. 2006] ["However, in 2001, Experian decided to
26 offer MIS customers direct Internet access to its database of more than 200 million
27 consumer credit histories, which included the records of Arizona consumers.

28 Offering Internet access to MIS' customers (and others) would increase profits for
- 12
DECLARATION OF DAVID A. SZWAK
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1 Experian, and allow it to expand its market. Switching from phone lines to the
2 Internet would cut costs of five to seven cents per minute, which in the aggregate
3 would save Experian millions of dollars. The new Internet interface would be more
4 user-friendly, and allow Experian to spend less on customer training."]

5 27. In fact, several years ago both Trans Union and Equifax
6 discontinued conducting their own reinvestigations and handling of consumer
7 disputes and outsourced the work to countries such as India, Philippines, and
8 Jamaica. Equifax sends the disputes it receives by electronic file to third party
9 outsource vendors in the Philippines and Jamaica. Trans Union does the same with
10 an outsource vendor in India. Outsourcing has compounded credit reporting
11 reinvestigation failures.

12 28. The Acosta proposed settlement appears to do nothing to
13 address this underlying cause of the failures in the CRA reinvestigation practices.

14 29. I reviewed the work performed by the Sherman Group in this
15 case and have been asked to comment on the quality of that work. I reviewed the
16 depositions taken from the defendants and the discovery undertaken. I ultimately
17 concluded that it appeared that the Sherman Group did not attempt to discover or
18 understand basics of the credit reporting process and did not press Trans Union or
19 the other parties to produce documents and deponents in order to explore and obtain
20 necessary facts and evidence to understand and provide the court an understanding
21 of the facts. Plaintiff's counsel was grossly negligent in litigation of the Acosta
22 case.

23 30. The Sherman Group did not even obtain the most basic credit
24 reporting manuals from defendants. In evaluating this case, it is necessary to obtain
25 and have an understanding of the Metro Tape reporting system. Since
26 implementation of Metro 2, most of the industry has converted to the updated
27 version though some have lagged behind and use the older version. Trade and other
28 reported data is reported in what is called Metro Tape, a standardized data reporting

1 format with a variety of preset data fields and standardized formatting for easy
2 uploading and inclusion into the credit reporting database system and its existing
3 file record format. Each of the national credit reporting agencies use this
4 standardized format and this format is promoted for use by the entire lending,
5 collection and data reporting communities through the agencies' trade organization
6 and lobby group, CDIA [Consumer Data Industry Association]. The Metro tape
7 format contains data fields for reporting a variety of bankruptcy and bankruptcy-
8 related items of information. These data fields, in the database structure, are
9 capable of being searched and evaluated by the credit reporting database search
10 mechanisms and programs. Without those manuals to understand these highly
11 technical and coded fields, it would be impossible to understand the reporting
12 process and how to cure bankruptcy reporting problems in credit reports. I found
13 that the Sherman Group lacked an understanding of Metro Tape formatting, fields,
14 search mechanisms, and coding.

15 31. I also noted that Trans Union and the other parties failed to
16 provide the Sherman Group even less sophisticated manuals, such as the Credit
17 Reporting System [CRS] manual, which provides new credit reporting agency
18 employees an overview of the systems and flow of information. This basic
19 overview would have offered the Sherman Group some insight into other
20 documents they needed to request and necessary industry jargon. It appeared to me
21 that the Sherman Group was stumbling through the litigation with a lack of
22 knowledge of the basic concepts and documents needed to litigate the case and
23 develop evidence about the source of the problem their clients were grappling with
24 and a lack of understanding as to how to fix it.

25 32. From my analysis of the Acosta case, it seems that Trans Union
26 produced only 79 pages of documents. These were the basic documents always
27 provided by Trans Union in any of its cases. These documents pertain only to Mr.
28

1 Acosta and are largely a copy of those documents he already would have received
2 in the dispute/reinvestigation process. These are not helpful to the issues presented.

3 33. I also noted that the defendants provided witnesses to the
4 Sherman Group which were ill-suited for the needs of this case. For example, I
5 have deposed Diane Terry and Steve Reger, from Trans Union, on multiple
6 occasions over many years. Mrs. Terry is a Fullerton, California-based employee
7 of Trans Union who works in a quasi-legal department status and is nothing short of
8 a professional witness for the company, having been deposed and offered to provide
9 testimony for Trans Union on countless occasions. It is her role with the company.
10 Her background is reinvestigations of consumer fraud and identity theft disputes
11 and she has no knowledge [admittedly] of the metro tape reporting system or codes
12 or search programs and routines. She has no background in bankruptcy reporting
13 codes and fields in metro tape. She is simply and routinely offered up as a
14 Fed.R.Civ.Proc. 30[b][6] witness to plaintiff counsels. While she is acceptable in
15 basic reinvestigation process and CDV and ACDV interpretation, she lacks any
16 training or knowledge about the data intake, data posting, data match logic,
17 comparative search program and related areas. Any novice attorney could have
18 easily determined that in a few minutes of taking her deposition. Comparably, Mr.
19 Reger is a Fullerton, California-based employee of Trans Union who works in
20 Fraud Victim Assistance Department [FVAD] and is also a professional witness for
21 the company, having been deposed and offered to provide testimony for Trans
22 Union on countless occasions. Mr. Reger has been in the FVAD for many years
23 and is normally offered in theft of identity litigation. This is his role with the
24 company. His background is ID theft reinvestigations of consumer disputes and
25 basic services Trans Union offers to fraud victims. He has no knowledge
26 [admittedly] of the metro tape reporting system, codes, search programs and
27 routines. He has no background in bankruptcy reporting codes and fields in metro
28 tape. He is simply and routinely offered up as a Fed.R.Civ.Proc. 30[b][6] witness

1 to plaintiff counsels. While he is acceptable to discover basic identity theft
2 reinvestigation process, fraud alert postings through reinvestigation center
3 activities, and CDV and ACDV interpretation, he lacks any training or knowledge
4 about the data intake, data posting, data match logic, comparative search program
5 and related areas. Neither Terry nor Reger would be involved in setting any policy
6 or procedure relevant to this case.

7 34. The Sherman Group needed to depose Lynn Romanowski and
8 William "Bill" Stockdale, who are widely known as persons in Trans Union who
9 would have requisite knowledge of the issues in this case. Of course, they are just
10 two of the routinely offered corporate designees on proper topics. Of course, the
11 Sherman Group failed to articulate the proper areas of inquiry to Trans Union. Mrs.
12 Romanowski works in a systems analyst role and devises business rules for
13 incorporation into computer programs by the programmers at Trans Union. She
14 could easily testify about Metro Tape formats, codes, search programs, routines,
15 match logic, and how to "fix" the problem addressed in this lawsuit, from Trans
16 Union's perspective. She has testified on many occasions for Trans Union and I
17 have taken her testimony in the past on multiple occasions. Mr. Stockdale oversees
18 public records data intake and works with Trans Union sources, including [at least
19 historically] Hogan Information. Mr. Stockdale would be knowledgeable about
20 Metro Tape formats, codes, search programs, routines, match logic, and how to
21 "fix" the problem addressed in this lawsuit, from Trans Union's perspective. He
22 has testified on many occasions for Trans Union and I have taken his testimony in
23 the past on multiple occasions.

24 35. Both Romanowski and Stockdale are figureheads at Trans
25 Union and their names and roles are widely reported. Further, both have worked in
26 study groups and association groups to address Metro Tape issues. The Sherman
27 Group simply failed to research the area and determine who the widely known
28 witnesses were.

1 36. I have also deposed Alicia Fluellen, the only witness Plaintiff's
2 counsel deposed from Equifax, on multiple occasions over many years. Mrs.
3 Fluellen is an Atlanta, Georgia-based employee of Equifax who works in a quasi-
4 legal department status and is nothing short of a professional witness for that
5 company, having been deposed and offered to provide testimony for Equifax on
6 countless occasions. This is her role with the company. Her background is
7 reinvestigations of consumer disputes and she has no knowledge [admittedly] of the
8 metro tape reporting system or codes or search programs and routines. She has no
9 background in bankruptcy reporting codes and fields in metro tape. She is simply
10 and routinely offered up as a Fed.R.Civ.Proc. 30[b][6] witness to plaintiff counsels.
11 While she is acceptable in basic reinvestigation process and CDV and ACDV
12 interpretation, she lacks any training or knowledge about the data intake, data
13 posting, data match logic, comparative search program and related areas. Any
14 novice attorney could have easily determined that in a few minutes of taking her
15 deposition. At Equifax, the proper witness the address the issues in this case would
16 have been Lynn Hudziak, a corporate designee for issues pertaining to match logic,
17 metro tape formatting and codes and bankruptcy reporting issues.

18 37. Any novice attorney could have easily determined that in a few
19 minutes of taking his deposition. My review of these two Fluellen depositions
20 revealed that plaintiffs' counsel taking the depositions was not well informed or
21 equipped to understand the testimony being taken. For example, various common
22 industry terms and concepts were unknown to counsel and he appeared to be
23 confused by basic concepts.

24 38. The Sherman Group could have obtained the limited
25 information it was able to discover in Acosta and Pike, and considerably more by
26 reaching out to one of the many consumer groups that have a noted presence in this
27 field, such as the National Association of Consumer Advocates [NACA], National
28 Consumer Law Center [NCLC], United States Public Interest Research Group

1 [USPIRG], Electronic Privacy Information Center [EPIC], and countless other
2 consumer information sources who have specialized knowledge and research
3 capabilities to assist counsel, such as the Sherman Group, with such information
4 needs. NACA and NCLC provide regular and national conferences on the FCRA.
5 There is a large network of attorneys with skill and experience in this area including
6 a number of them in California and even more generally in the Ninth Circuit. In
7 addition, most attorneys who practice in this very specialized field do so in cases
8 across the country. Some of these attorneys can be found on the website
9 www.myfaircredit.com, an internet site ranking on the first page of most common
10 FCRA word and phrase FCRA "google" searches. Further, these consumer
11 organizations and consumer lawyer groups work cooperatively and publish a large
12 number of books, manuals and other writings to assist lawyers and consumers who
13 face credit reporting and related problems. The Sherman Group could have
14 obtained basic discovery devices from the most well known source books for
15 lawyers on consumer laws, the National Consumer Law Center series on consumer
16 law topics, particularly, the Fair Credit Reporting Act manual and CD enclosures.
17 Further, as shown above, a cursory "google" search would have exposed codes and
18 information which should have made the problems with "BQT" glaring to the
19 Sherman Group.

20 39. Defense counsel in this case and others where the credit
21 reporting agencies are sued are particularly knowledgeable about their clients'
22 business, computer structure, data formats, reporting codes, documentation and
23 jargon. These attorneys are carefully and continuously trained in the business and
24 most of them handle exclusively the work of that agency and have no other
25 substantial clientele.

26 40. My conclusion is unqualified that the litigation of that case was
27 entirely inadequate for an individual case, let alone one that would seek to represent
28 a larger class. The Sherman Group work product in my opinion was very poor.

1 41. I do not know the attorneys who litigated the Acosta case and
2 have no knowledge of their work outside this one case I have reviewed. But it is
3 my opinion that the litigation or lack thereof in Acosta very likely negatively
4 impacted the value of Mr. Acosta's case individually. It appears that no meaningful
5 discovery was accomplished. No useful depositions were taken. No substantive or
6 relevant documents were exchanged. Although the Plaintiff's propounded
7 numerous written discovery pleadings, including multiple sets of Interrogatories,
8 Requests for Production of Documents and Requests for Admission, they received
9 almost nothing substantive in response. This is not uncommon in litigation against
10 Trans Union and Experian. In fact, in nearly all substantial litigation against these
11 Defendants under the FCRA, the Plaintiff has had to prosecute a Motion to
12 Compel. In Acosta, Trans Union acknowledged this tactic when it refused to
13 respond to a latter set of Interrogatories because Acosta counsel had failed to timely
14 file a Motion to Compel.

15 42. Though listed above, I need to specifically make additional
16 comment about the discovery documents from a second case Kathryn Pike v.
17 Equifax, provided to me by White/Hernandez plaintiffs' counsel, which they
18 represent were received pursuant to a stipulation and order with defendants. As
19 stated, I reviewed those documents. I am uncertain which if any of these
20 documents were ever used in that case, but the list of such documents and discovery
21 apparently obtained by Acosta's counsel pertaining to Equifax was limited to the
22 following: (a) Trial transcripts from an unrelated mixed file/id theft case litigated
23 by my colleague and good friend Robert Sola, Kirkpatrick v. Equifax, [U.S.D.C.
24 Ore.]; (b) Copies of various Complaints filed in other cases by other attorneys,
25 including some FCRA attorneys who are members of NACA [in one such case I
26 was an expert witness for the plaintiff, Tina Hunter]; (c) Equifax's general
27 responses to basic Interrogatories, Requests for Admission and Requests for
28 Production of Documents in Acosta v. Equifax, Superior Court of California,

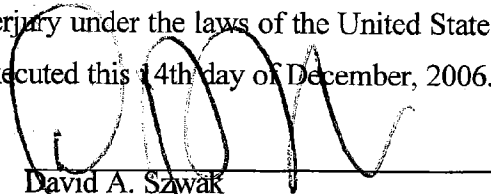
1 County of Orange [Case No. 03CC06992]; (d) Deposition Transcript of Luke Van
 2 Dijk in Acosta v. Equifax, Superior Court of California, County of Orange [Case
 3 No. 03CC06992]; (e) A letter from Equifax' counsel dated October 3, 2005
 4 transmitting the frozen scans in the Dennis Pike v. Equifax matter and including a
 5 few frozen scans; (f) Deposition Transcripts of Alicia Fluellen taken in Jose L.
 6 Acosta v. Equifax Information Services, Superior Court of the State of California,
 7 County of Orange, Case No. 03CC06992 [October 23, 2003] and Dennis Pike v.
 8 Equifax Information Services, Superior Court of the State of California, County of
 9 Orange, Case No. 03CC10991 [May 19, 2005]; (g) A mostly redacted Equifax 2001
 10 Indicating Manual; (h) Equifax Information Services LLC – Agreement for Service.
 11 An Attachment to an email (6/5/03); and (i) Equifax' Initial Disclosures in Kathryn
 12 Pike v. Equifax, U.S.D.C. Central Division of California [Southern Division],
 13 including some documents [February 27, 2006]. The only document provided to
 14 me that pertains to the case of Kathryn L. Pike v. Equifax Information Services
 15 LLC, 8:05-cv-01172 [U.S.D.C. C.D. Cal.], was the initial disclosures in that case
 16 from February 2006. Most of these documents have nothing to do with the account
 17 "Included in Bankruptcy" [AIB] problem and litigation that is the subject of this
 18 case. Kirkpatrick v. Equifax was a Mixed File/ID Theft case and I consulted with
 19 plaintiff's counsel in that case. The frozen scans of Dennis Pike are simply the
 20 internal archive of that other consumer's credit file at Equifax. Most of the Equifax
 21 discovery answers pertain solely to the posture of the prior Acosta v. Equifax case,
 22 which I am told was settled, or the actual credit files of Jose Acosta maintained by
 23 Equifax. I am not sure why Acosta counsel gathered the several other FCRA
 24 complaints from other cases, but they are forms that are fairly outdated, with more
 25 relevant and current pleadings already available in the NCLC manual/treatise, Fair
 26 Credit Reporting. The depositions and evidence from Equifax's spokesperson,
 27 Alicia Fluellen, are also not helpful in a case such as this one. Her deposition
 28 testimony, rarely changing, is also often circulated amongst FCRA attorneys who

1 are litigating their first case against Equifax and need to understand the nature of
 2 her knowledge. The only other relevant document apparently obtained or used by
 3 the attorneys for Kathryn Pike was the Equifax Indicating Manual. This is the
 4 standard document that Equifax provides to opposing parties in litigation about the
 5 agency's reinvestigation procedures. It is a simply stated manual that describes the
 6 basic Equifax rules for handling a consumer's dispute. However, Equifax provided
 7 only a 2001 edition and even then only one that was almost entirely redacted. Still,
 8 had Acosta or Pike counsel understood and obtained a complete Equifax Indicating
 9 Manual, they would have learned that Equifax already follows the "new"
 10 reinvestigation procedure the Acosta settlement claims to impose. As in the Acosta
 11 case, it appears that the Kathryn Pike counsel had very little documentary evidence
 12 or meaningful discovery responses upon which to base their claims.

13 43. The targeted problem presented in this case, the failure to update
 14 trades post-discharge, has been one of the "hottest" and growing case patterns in the
 15 FCRA field. Numerous attorneys are litigating these claims across the country
 16 under both the FCRA and as bankruptcy stay and discharge violations. I
 17 conservatively estimate that there have been at least dozens of cases filed against
 18 Trans Union and Equifax for their inaccurate post-bankruptcy reporting. At each of
 19 the last several NACA and NCLC FCRA conferences and advanced seminars, the
 20 bankruptcy reporting claims have been the most discussed. I fully expect that there
 21 will be numerous objections to the present proposed settlement from these attorneys
 22 and likely some public interest groups if considered for a Fairness Hearing.

23 I declare under penalty of perjury under the laws of the United States
 24 that the foregoing is true and correct. Executed this 14th day of December, 2006.

25 Dated: December 14, 2006

26 
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Also admitted to practice in the federal courts of the Eastern, Western and Middle Districts of Louisiana, the Eastern and Western Districts of Arkansas, the Northern, Eastern and Southern Districts of Texas, the Eastern District of Michigan, the District of Arizona, the Fifth Circuit Court of Appeals, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals and the Eleventh Circuit Court of Appeals.

Admitted, United States Supreme Court, 2003

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July '91 **BODENHEIMER, JONES, KLOTZ & SIMMONS, LLP**
to Title: Attorney/Partner
October '96 Areas of Practice: Insurance defense, personal
injury, consumer credit and commercial litigation.
Associate [October, 1991 - December, 1994]
Partner [December, 1994 - October, 1996]

May '90 **SEALE, SMITH, ZUBER & BARNETTE**
to Title: Law Clerk
June '91 Areas of Research: Insurance defense, personal
injury, bankruptcy and medical malpractice defense.
Phone: 504-922-4400 **Bill Kaufman, Brent Kinchen**

May '89 **KLEINPETER, SCHWARTZBERG & STEVENS**
to Title: Law Clerk
June '91 Areas of Research: Personal injury and toxic tort.
Phone: 504-926-4130 **Bob Kleinpeter**

May '89 **WILLIAM E. CRAWFORD, JAMES BAILEY PROF. OF LAW**
to Title: Law Clerk
July '91 Areas of Research: Special research projects for
the Law Center, Law Institute, Bar Review and CLE
programs. Focused research: Appellate review of
civil juries.
Phone: 504-342-6361 / 504-388-8646 **William E.
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January '85 **NINETEENTH JUDICIAL DISTRICT COURT**
to Title: Interviewer, Bail Bond Project
August '88 Duties: Interview arrestees and prisoners
requiring appearances in District Court. Review
police reports and assist judges in setting fair
bond amounts and recommending personal sureties.
Phone: 504-389-3114 **Hon. Michael Ponder**

BAR ACTIVITIES:

Chairman, Consumer Protection Section, Louisiana
State Bar Association [2006-Present]; Louisiana
State Bar Association, House of Delegates, 26th
Judicial District Court [2006-Present]; Louisiana
Law Institute, Committee Member, Uniform Computer

Information Transactions Act [UCITA], 2000-2001; Louisiana State Bar Association, House of Delegates, First Judicial District Court [1998-2000]; National Association of Consumer Advocates [NACA] [1997-date]; Special Assistant Attorney General, State of Louisiana [1993-1994]; Harry V. Booth-Henry Politz American Inn of Court, Shreveport Chapter, Pupil [1993-1994], Barrister [2004-2007]; Editor, "The Bar Review," Shreveport Bar Association [1994-1996]; Louisiana, Federal, American and Shreveport Bar Associations; Louisiana Association of Defense Counsel; Founding Member, Credit Fraud Research Institute, Inc.

CIVIC ACTIVITIES:

Northwest Louisiana Wildlife & Aquatic Education Program, Board of Directors [1998-2000]; Bossier Little League Tee-Ball and Baseball, Sponsor and Head Coach, Tigers [1999], Indians [2000], Marlins [2001], Cubs [2002], Phillies [2003], Reds [2003], Reds [2004], Pirates [2005], Reds [2005]; Yankees [2006], Red Sox [2006]; Krewe of Gemini, Mardi Gras Krewe [1997-2003], Duke of Arkansas [2000-2001]; Ducks Unlimited, Bossier Chapter, Member and Sponsor; Shreveport Pee-Wee Football League, Sponsor and Head Coach, First Baptist Patriots [2001]; Bossier Parish Pee-Wee Football League, Coach, Dolphins [2002], Head Coach, Cowboys [2003], Head Coach, Cowboys [2004], Head Coach, Steelers [2005]; Head Coach, Steelers [2006]; Bossier Parish Summer League Baseball, Head Coach, Braves [2003], Astros [2004]; Sponsor, Shreveport Mudbugs Canadian Hockey League team [2003-2006].

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Portfolio, Portfolio Publishing Company, p.9 [September-October, 1997]; **Fair Credit Reporting, Credit Cards and Fraud**, Practicing Law Institute, 990 PLI/CORP 647 [1997]; **"Enforcement of the Assault and Battery Exclusion in Louisiana: Hickey v. Centenary Oyster House,"** *Louisiana Law Review*, Vol.60, Issue 3, pp.793-807 [Spring 2000]; **"Uniform Computer Information Transactions Act [UCITA]: The Consumer's Perspective,"** *The Consumer Advocate*, National Association of Consumer Advocates, Vol.9, Issue 1, pp.9-30 [April, 2003]; **"Uniform Computer Information Transactions Act [UCITA]: The Consumer's Perspective,"** *Louisiana Law Review*, Vol.63, Issue 1 [Spring 2003]; **"Update on Identity Theft Under the FCRA,"** *Quarterly Report: Consumer Finance Law*, Vol.58, Nos. 1-2, pp.66-71, cited as 58 *Consumer Fin. L.Q. Rep.* 66, [Spring-Summer, 2004]; **"The Consumer Corner: "As Is" Sales in Louisiana,"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.2, pp.8-9 [February, 2005]; **"The Consumer Corner: Privacy Exposed: Public versus Private Settings,"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.3, pp.10-11,18 [March, 2005]; **"The Consumer Corner: Louisiana's Physical Fitness Services Act,"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.4, p.16 [April, 2005]; **"The Consumer Corner: FACTA,"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.5, pp.16-17 [May, 2005]; **"The Consumer Corner: What is HOEPA?,"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.6, pp.14-15,19 [June, 2005]; **"The Consumer Corner: FTC Holder Rule,"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.7, pp.19-21 [September, 2005]; **"Privacy Exposed,"** *Quarterly Report: Consumer Finance Law*, Vol. 59, No. 3, pp.261-264, cited as 59 *Consumer Fin. L.Q. Rep.* 261 [Fall, 2005]; **"The Consumer Corner: Fair Debt Collections Practices Act [FDCPA],"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.9, p.14 [November, 2005]; **"The Consumer Corner: Check 21: What Now?,"** *The Bar Review*, Shreveport Bar Association, Vol.14, No.10, p.16,18 [December, 2005]; **"The Consumer Corner: Self-Help Repossession,"** *The Bar Review*, Shreveport Bar Association, Vol.15, No.5, pp.12-13 [May, 2006]; **"The Consumer Corner: Class Action Fairness**

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Act and Consumer Litigation [1 session], "Fourth Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], San Francisco, California [November, 1995]; **Credit, Lions Club of Shreveport** [October, 1995]; **Fair Credit Reporting, Investigations and Credit Reports**, Northwest Louisiana Claims Association [January 9, 1996]; **Theft of Identity and Credit Fraud**, The Phil Donahue Show, Multimedia Entertainment, [February, 1996]; **Credit Fraud**, KSLA T.V. - Channel 12, Shreveport, Louisiana [April, 1996]; **Fair Credit Reporting, Credit Cards and Fraud**, "Banking, Commercial & Consumer Law Seminar," Center For Continuing Professional Development, Paul M. Hebert Law Center, Louisiana State University [May 10, 1996]; **Fair Credit Reporting, Credit Cards and Fraud**, National Association of Consumer Bankruptcy Attorneys, "1996 Annual Convention and CLE," San Antonio, Texas [May 17, 1996]; **Consumer Credit**, "Challenges & Changes CLE Seminar," Shreveport Bar Association [May 31, 1996]; **Consumer Credit Information: What You Can and Can't Get**, "Louisiana Claims Association's Educational Conference/Expo," Louisiana Claims Association, Inc. [June 21, 1996]; **Credit Fraud**, Shreveport Legal Secretaries Association [October, 1996]; **Fair Credit Reporting Act: Introduction to Litigation and Fair Credit Reporting Act Developments** [2 sessions], "Fifth Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], Washington, D.C. [October, 1996]; **Fair Credit Reporting Act Litigation**, "Statewide Consumer Rights Litigation Conference," Consumer Law Task Force-Southeast Louisiana Legal Services Corporation, Lafayette, Louisiana [November, 1996]; **Complying With the Fair Credit Reporting Act, Data Compilation, Privacy, and Reporting Laws, and Requirements For Correcting Billing and Credit Report Errors**, "Consumer Credit Law Update," Louisiana State Bar Association, New Orleans, Louisiana [April, 1997]; **Fair Credit Reporting, Credit Cards and Fraud**, "Keeping the Big Boys Honest - Consumer Law Seminar," Virginia Trial Lawyers Association, Richmond, Virginia [April, 1997]; **Fair Credit Reporting, Credit Cards and Fraud**, "People's Law School," Shreveport Bar Association [April 29, 1997]; **Fair Credit**

Reporting, Credit Cards and Fraud, "Consumer Financial Services Litigation," Practising Law Institute, New York City, New York [May 1-2, 1997]; Consumer Remedies and Bankruptcy Relief: Student Loans and the Fair Credit Reporting Act, National Association of Consumer Bankruptcy Attorneys, "1997 Annual Convention and CLE," San Diego, California [May 2-4, 1997]; Internet Security, Privacy and Fraud, Cable News Network [CNN] [July 22, 1997]; Fair Credit Reporting Act Developments: New Statute and New Cases, Fair Credit Reporting Act I, Preparing an FCRA Case: Common Violations, Client Selection and Pleading, and Fair Credit Reporting Act II, Litigation: Pre-Trial Practice, Discovery, Expert Witnesses, Summary Judgment and Settlement [3 sessions], "Sixth Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], New Orleans, Louisiana [October, 1997]; Theft of Identity, Fraud and the Bronti Kelly Case, EXTRA [ABC] [November 5, 1997]; Credit Fraud, Credit and Insurance, KEEL Radio, Shreveport, Louisiana [numerous talk shows, 1993-date]; Credit Fraud, KBCL Radio, Shreveport, Louisiana [talk shows, 1995]; Credit Fraud, USA Radio Network, Daybreak Show, Dallas, Texas [talk show, August, 1996]; Credit, WREC, Memphis, Tennessee [talk show, August, 1996]; Credit Fraud, WJR, Paul J. Smith Show, Detroit, Michigan [talk show, August, 1996]; Credit, KWKH Radio, Shreveport, Louisiana [Lawline, March, 1997]; Credit, WWL Radio, New Orleans, Louisiana [The Bob Show, August, 1997]; Use of Credit Reports in Check-Cashing Environment, KSLA T.V. - Channel 12, Shreveport, Louisiana [February 5, 1998]; Prescreening and Pre-Approved Credit, KSLA T.V. - Channel 12, Shreveport, Louisiana [March 3, 1998]; Salary-Lenders, Check Cashing Services and Loansharking, KTBS T.V. - Channel 3, Shreveport, Louisiana [March 19, 1998]; Fair Credit Reporting Act Developments: Updates, "Seventh Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], San Diego, California [October, 1998]; Y2K: Year 2000 Problem With Computers, KSLA T.V. - Channel 12, Shreveport, Louisiana [November, 1998]; Fair Credit Reporting, Investigations and Accessing Credit Reports, Northwest Louisiana Claims Association [October 13,

1996]; **Fair Credit Reporting**, "The Art of Handling Consumer Law Issues," Louisiana State Bar Association, New Orleans, Louisiana [November, 1998]; **Consumer Scams During the Holidays**, KTBS T.V. - Channel 3, Shreveport, Louisiana [November, 1998]; **Salary-Lenders, Check Cashing Services and Loansharking**, KTBS T.V. - Channel 3, Shreveport, Louisiana [January 4, 1999]; **Consumer Law: The Role of the Federal Trade Commission and the Private Attorney**, Shreveport Bar Association [March 24, 1999]; **Credit Fraud and the Carol Mixon Case**, KTBS T.V. - Channel 3, Shreveport, Louisiana [March 26, 1999]; **Consumer Law Violations**, Optimist Club of Bossier City, Barksdale AFB, Louisiana [March 31, 1999]; **Credit Fraud**, KTBS T.V. - Channel 3, Shreveport, Louisiana [May, 1999]; **Claims Adjusting, FCRA, Privacy and Internet Research**, "Louisiana Claims Association's Educational Conference/Expo," Louisiana Claims Association, Inc. [June, 1999]; **Online Banking: Security, Accuracy, Authentication and Cryptography**, KTBS T.V. - Channel 3, Shreveport, Louisiana [July, 1999]; **Credit Report Mis-Merges: Father/Son, Junior-Senior, and the Brian Holoubek case**, KTBS T.V. - Channel 3, Shreveport, Louisiana [July, 1999]; **Fair Credit Reporting, Credit Cards and Fraud**, "Fall Fiesta," Virginia Trial Lawyers Association, Williamsburg, Virginia [September, 1999]; **Credit is Hard to Restore: Theft of Identity and the Mixon v. Equifax, et al, Case**, CBS Evening News, Eye on America, [Http:// www.cbs58.com/ now/ story/0,1597,65044-393,00.shtml](http://www.cbs58.com/story/0,1597,65044-393,00.shtml), [October 5, 1999]; **Wendell Rogers/Sunbelt Ponzi Litigation**, KTBS T.V. - Channel 3, Shreveport, Louisiana [October 7, 1999]; **Fair Credit Reporting Act Developments** [1 session], "Eighth Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], Washington, D.C. [November, 1999]; **Fair Credit Reporting Act and Introduction to Litigation**, "VTLA's February Fiesta," Virginia Trial Lawyers Association, Williamsburg, Virginia [February, 2000]; **Credit and Collections**, WBAL Radio, Baltimore, Maryland [May 18, 2000]; **The Fair Credit Reporting Act, Investigations, Identity Theft and Privacy-Related Matters**, Louisiana Private Investigators Association [October 8, 2000]; **Fair Credit Reporting Act and Introduction to Litigation**, "VTLA's Fall Fiesta," Virginia Trial

Lawyers Association, Williamsburg, Virginia [October, 2000]; **Fair Credit Reporting Act Developments** [1 session], "Ninth Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], Denver, Colorado [October, 2000]; **Credit Fraud During the Holidays**, KTBS T.V. - Channel 3, Shreveport, Louisiana [November, 2000]; **Your Financial Future**, Hosted by Robertson, Bailes & McClelland, LLP, Certified Public Accountant firm, KEEL Radio, Shreveport, Louisiana [December 18, 2000]; **Fair Credit Reporting, Credit Cards and Fraud**, "Consumer Financial Services," American Bar Association, Park City, Utah [January 5, 2001]; **Fair Credit Reporting Act, Investigations and the Gramm-Leach-Bliley Act**, "Charting Your Course to Success: Louisiana Claims Association Educational Conference/Expo, Louisiana Claims Association, Inc., Biloxi, Mississippi [May, 2001]; **Fair Credit Reporting Act**, "Putting the 'Fair' Back Into Fair Credit Reporting," National Association of Consumer Advocates, Las Vegas, Nevada [June 9-10, 2001]; **Fair Credit Reporting Act, Credit Cards and Fraud**, "VTLA's Fall Fiesta," Virginia Trial Lawyers Association, Richmond, Virginia [September 29-30, 2001]; **More Fair Credit Reporting Act Developments and Tips** [1 session], "Tenth Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], Baltimore, Maryland [October 26-29, 2001]; **Identity Theft and Account Fraud**, "Collections Practice 2001: You Haven't Won if it's Not in the Bank," State Bar of Texas, Dallas, Texas [November 8-9, 2001]; **Stolen Identities and Credit Fraud**, KTAL T.V. - Channel 6, Texarkana, Texas [December, 2001]; **Credit Fraud and Information Security**, KTBS T.V. - Channel 3, Shreveport, Louisiana [January 18, 2002]; **Identity Theft and Account Takeover Fraud**, "Collections Practice 2001: You Haven't Won if it's Not in the Bank," State Bar of Texas, Houston, Texas [January 31, 2002]; **Class Action versus Mass Action: What Are the Client's Rights?**, KSLA T.V. - Channel 12, Shreveport, Louisiana [June 20, 2002]; **Identity Theft and Credit Fraud**, Certified Fraud Examiners, Shreveport, Louisiana [September 10, 2002]; **Identity Theft and Credit Reporting**, "Consumer Credit 2002," The Conference on Consumer Law Finance, Fort Worth, Texas [October 9-10, 2002];

Identity Theft and Privacy Issues, "The Law of Credit Contracts and Payment Systems," The Conference on Consumer Law Finance, New Orleans, Louisiana [October 17-18, 2002]; **Identity Theft: Who Are You When Your Identity is Gone**, Mrs. Jones?, "Consumer Credit 2002," The Conference on Consumer Law Finance, Dallas, Texas [November 7-8, 2002]; **Fair Credit Reporting Act Developments** [1 session], "Eleventh Annual National Consumer Rights Litigation Conference," National Consumer Law Center [NCLC], Atlanta, Georgia [October 24-27, 2002]; **Information Law**, WIBR - Talk Radio, Baton Rouge, Louisiana [January 10, 2003]; **Fair Credit Reporting Act Conference**, National Association of Consumer Advocates, Orlando, Florida [March 7-9, 2003]; **Identity Theft and Privacy Issues**, Annual Conference of Louisiana Fraud and Forgery Investigators, Gonzales, Louisiana [April 10, 2003]; **Fair Credit Reporting's Interplay With Bankruptcy**, National Association of Consumer Bankruptcy Attorneys, "2003 Annual Convention and CLE," New Orleans, Louisiana [May 2-4, 2003]; **Privacy Issues in Claims Investigations and Surveillance**, "Louisiana Claims Association Educational Conference/Expo," Louisiana Claims Association, Inc., Biloxi, Mississippi [May, 2003]; **Credit Reporting, Credit Cards and Fraud**, Florida State Bar Association Annual Continuing Legal Education and Convention, Orlando, Florida [June 23-27, 2003]; **Identity Theft**, American Association of Law Libraries, 96th Annual Meeting and Conference, Seattle, Washington [July 13-16, 2003]; **Update on Identity Theft and Impermissible Access to Credit Reports**, "Consumer Debt Collection and Bankruptcy," The Conference on Consumer Law Finance, Fort Worth, Texas [October 16, 2003]; **Update on Identity Theft and Uniform Computer Information Transactions Act [UCITA]**, "Electronic Commerce, Privacy, and Money laundering Compliance," The Conference on Consumer Law Finance, Dallas, Texas [December 12, 2003]; **Are You the Victim of Identity Theft? Identity Theft and Credit Reporting Rights**, "Louisiana Library Association Annual Conference," Louisiana Library Association, Monroe, Louisiana [March 25, 2004]; **Identity Theft, Account Takeover Fraud and the Fair Credit Reporting Act**, Oklahoma Bar Association, Tulsa, Oklahoma [May 14, 2004]; **Fair Credit**

Reporting Act, National Association of Consumer Advocates, Chicago, Illinois [May 15-16, 2004]; **Identity Theft, Account Takeover Fraud and the Fair Credit Reporting Act**, Oklahoma Bar Association, Oklahoma City, Oklahoma [May 21, 2004]; **Credit Reporting Industry Issues: Mixed Files, Identity Theft & Accuracy Issues. How to Help the Harmed Consumer**, Hawaii Trial Lawyers, Honolulu, Hawaii [July 10, 2004]; **Consumer Protection, Identity Theft, The FACT Act, and the FCRA**, "Payment Transactions and Credit Contracts in the Twenty-First Century," The Conference on Consumer Law Finance, Grapevine, Texas [September 23-24, 2004]; **The FACT Act and the FCRA**, NARCA Annual Conference, National Association of Retail Collection Attorneys, Boston, Massachusetts [April 14-15, 2005]; **Identity Theft and Financial Crimes**, Shreveport Bar Association Pro Bono Project, Shreveport, Louisiana [May 25, 2005]; **Identity Theft**, KRMD Radio, The Tom Pace Show, Shreveport, Louisiana [May 27, 2005]; "Litigating Accuracy Cases With Furnishers," National Association of Consumer Advocates [NACA] 2005 Fair Credit Reporting Act Conference, [5 sessions] New Orleans, Louisiana [June 3-5, 2005]; **Identity Theft and Financial Scams**, KEEL Radio, The Best of Times Show, Gary Calligas, Shreveport, Louisiana [June 11, 2005]; **Security Freezes and FCRA Amendments**, KTAL T.V. - Channel 6, Texarkana, Texas [August 2005]; **Identity Theft, FCRA, FACTA Issues and Privacy**, "Auto Sales and Finance 2005," The Conference on Consumer Law Finance, Fort Worth, Texas [September 22-23, 2005]; **FTC Holder Rule, Choice of Law, Choice of Venue, and Arbitration Clauses and Identity Theft, Mixed Credit Files and Privacy Breaches: Credit Bureau and Furnisher of Data Issues [FCRA and FACTA]**, Missouri Bar Association, Kansas City and St. Louis, Louisiana [October 20-21, 2005]; **NACA 2006 Fair Credit Reporting Act Conference**, "Playing to Win," National Association of Consumer Advocates, Las Vegas, Nevada [May 5-7, 2006] [five sessions: Case Updates, Credit Reporting Agencies' Internal Documents, Strategies in Multi-Defendant Cases, Trial Issues, and Roundtable Discussions]; **Credit Reporting and Identity Theft**, Florida Consumer Law Symposium, Florida State Bar Association Consumer Protection Committee and Office of the Attorney

General for the State of Florida, Tallahassee, Florida [May 16, 2006]; **Consumer and Family Law Conference**, Naval Justice School, Newport, Rhode Island [May 23, 2006] [two sessions: Fair Credit Reporting Act and FTC Holder Rule]; **Identity Theft**, Louisiana Credit Union League, Shreveport, Louisiana [June 1, 2006]; **Identity Theft, Credit and Collections, Privacy Piracy**, Mari Frank, KUCI-88.9-FM Talk Radio, Irvine, California [June 7, 2006]; **"Borrower/Lender Litigation," [Predatory Lending; Breach of Contract; Unjust Enrichment; LUPTA; TILA; FCRA; FDCPA; ECOA; Anti-Fax; Anti-Price Gouging; FTC Holder Rule; Arbitration; UCITA]**, Advanced Commercial Litigation Seminar, LSU Law Center, Baton Rouge, Louisiana [September 14, 2006]; **"Identity Theft Update,"** Consumer and Commercial Law Course, Texas Bar Association, Dallas, Texas [October 12-13, 2006]; **"Identity Theft Update,"** Consumer and Commercial Law Course, Texas Bar Association, Houston, Texas [November 30 - December 1, 2006]; **"Maxed Out,"** the movie, www.maxedoutmovie.com/index1.html, by Trueworks [movie production company], Producer James Scurlock, premieres March 11, 2006, at the South By Southwest Film Festival in Austin, Texas.

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I BELIEVE THIS IS A COMPLETE LISTING OF CASES WHERE I HAVE TESTIFIED BY DEPOSITION, AFFIDAVIT AND/OR REPORT IN, AS AN EXPERT:

- * Catherine Bergeron v. E. Bruce Ebert, a suit in State Court in Dallas County, Texas,
- * Melvin McBride, et al v. CSC Credit Services, et al, a suit in the United States District Court, Northern District of Texas,
- * Herbert Woller v. Box Canyon Creek Corporation, a suit in the United States District Court in Oregon,
- * Emily Wagner v. TRW, a suit in the United States District Court for the Western District of Louisiana,
- * Wilson v. Equifax, et al, c/w Brame v. Equifax, et al, suits in the United States District Court for the Middle District of North Carolina,
- * Janice Burrell v. GMF, a suit in the United States District Court in Nevada,
- * Elias Morales v. TRW, et al, a suit in the United States District Court for the Middle District of Florida,
- * Philip C. Larson v. Trimax Holdings, Inc., et al, a suit in the Court of Common Pleas of Alleghany County, Pennsylvania,
- * William Ghores v. Las Vegas Paving, a suit in the United States District Court for the District of Nevada,
- * Michael Ricke v. Trans Union, et al, a suit in the United States District Court for the District of Minnesota,
- * Terry O. Cousin v. Memphis Consumer Credit Association, a suit in the United States District Court for the Northern District of Mississippi,
- * Retail Merchants Association of Abilene, Inc. d/b/a Credit Bureau of Abilene, Inc. v. TRW, c/w Experian Information Solutions, Inc. v. Retail Merchants Association of Abilene, Inc. d/b/a Credit Bureau of Abilene, suits in the United States District Court for the Central District of California,
- * Hackney v. Access America, et al, a suit in the United States District Court for the District of Washington,
- * David Pena, Jr. v. CSC Credit Reporting, et al, a suit in the United States District Court for the Southern District of Texas,
- * Dr. Louis Thibodeaux v. Michael Rupers, et al, a suit in the United States District Court for the Southern District of Ohio,

- * Klempf v. Dunlap & Seeger, a suit in state court in Minnesota,
- * Gerry Doran Homes v. Craig Hockelburg, a suit in state court in Missouri,
- * In Re National Credit Management Group LLC d/b/a 1-800-YES-CREDIT, a suit in the United States District Court in New Jersey,
- * Myra S. Coleman v. Trans Union Corp., a suit in the United States District Court for the Northern District of Mississippi,
- * Thomas Chumley v. New South Federal Savings Bank, et al, a suit in the United States District Court for the Northern District of Alabama,
- * Ronald Watson v. Transsouth Financial Corp., a suit in the state court in Arizona,
- * Henry McMillen v. Equifax Information Services, a suit in the United States District Court for the District of Connecticut,
- * Michael J. Nagle v. Experian Information Solutions, a suit in the United States District Court for the Northern District of Alabama,
- * Randolph S. Phillips, et al v. Trans Union Corporation, a suit in the United States District Court for the Western District of Washington,
- * Johnna Marie Doran v. Credit Bureau Associates, et al, a suit in the United States District Court for the Eastern District of Pennsylvania,
- * Jerry Short v. Trans Union, a suit in the United States District Court for the Southern District of Mississippi,
- * James E. Jensen v. Experian Information Solutions, a suit in the United States District Court for the Eastern District of Texas,
- * Lavon Phillips v. Mary Grendahl, et al, a suit in the United States District Court for the District of Minnesota,
- * Jacqueline L. Richardson v. Equifax Credit Information Services, et al, a suit in the United States District Court for the Northern District of Mississippi,
- * Terry O. Cousin v. Trans Union, a suit in the United States District Court for the Northern District of Mississippi,
- * Shirley Sternaman v. Experian, et al, a suit in the United States District Court for the District of Minnesota,

- * Gracie Hernandez v. SMF Terrace Park, et al, a suit in the Superior Court of the State of Arizona, Maricopa County,
- * John Gilbert Reite v. American Express, et al, a suit in the United States District Court for the Northern District of California;
- * Nicole Alexis Anderson v. URS West, Inc., et al, a suit in the United States District Court for the Northern District of California,
- * Donald K. Melton v. Easy Credit, Inc., et al, a suit in the United States District Court for the Northern District of Mississippi,
- * John Clemmons Mares v. Trans Union, LLC, et al, a suit in the United States District Court for the District of New Mexico;
- * Harold Scott, Jr. v. Trans Union, et al, a suit in the United States District Court for the District of Maryland;
- * Michael R. Norris v. Experian Information Solutions, et al, a suit in the United States District Court for the Southern District of Texas,
- * Cecilia Kief v. Franklin Credit Management Corp., et al, a suit in the 332nd Judicial District of Hidalgo County, Texas,
- * Edwin Gregory Urrego v. Citibank, NA, et al, a suit in the United States District Court for the Southern District of Texas,
- * John J. McHale, et al v. Credit Bureau of the Pacific, et al, a suit in the United States District Court for the Hawaii,
- * Angela Neal v. Wells Fargo Bank, et al, a suit in the United States District Court for the Nebraska.
- Franklin Clark, on behalf of himself and all others similarly situated v. Experian Information Solutions, Inc., and Franklin Clark, on behalf of himself and all others similarly situated v. Equifax Information Services, LLC, and Franklin Clark, on behalf of himself and all others similarly situated v. Trans Union, LLC, class action suits in the United States District Court for the District of South Carolina,
- Bijan Hatefi v. Towbin Nissan, Inc., and Bijan Hatefi v. Towbin Jeep Eagle, Inc., suits in the United States District Court for the District of Nevada,
- Andrew Cole, Sr. v. Sherman Financial Group, et al, a suit in the United States District Court for the Eastern District of Texas,

- Jonathan E. Zorilla, et al v. Equifax Information Services, LLC, a suit in the United States District Court for the Southern District of Florida,
- Tim and Lisa Miller. v. Wells Fargo, et al, a suit in the United States District Court for the Western District of Kentucky;
- In re Angelia Collins, No.04-13990, in the United States Bankruptcy Court, in and for the Western District of Louisiana;
- Priyank Shah v. Collecto, Inc., No.DKC-04-4059, in the United States District Court, in and for the District of Maryland;
- Leonard Sacks v. Nissan Motor Acceptance Corp., No.MJG-00-3285, in the United States District Court, in and for the District of Maryland.

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**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

TERRI N. WHITE, ROBERT
 RADCLIFFE, CHESTER CARTER,
 MARIA FALCON, and ALEX GIDI, et
 al.,

Plaintiffs,

vs.

TRANS UNION LLC,

Defendant.

Case No. 8:05-CV-01073 DOC (MLG)

STATEMENT OF FACTS

TERRI N. WHITE, ROBERT
 RADCLIFFE, CHESTER CARTER,
 MILAGROS GABRILLO, and
 CLIFTON C. SEALE III, et al.,

Plaintiffs,

vs.

EQUIFAX INFORMATION
 SERVICES, LLC

Defendant.

Case No. 05-CV-07821 DOC (MLG)

INTRODUCTION

This Statement of Facts is prepared by counsel in the above-captioned actions (the "*White/Hernandez* cases"). It provides background information in connection with the class action settlements being proposed by counsel for plaintiffs in two different, but related cases, pending before the same Court (the "*Acosta/Pike* cases"). The proposed settlements concern Trans Union LLC ("Trans Union") and with Equifax Information Services, Inc. ("Equifax"). Plaintiffs' counsel in the *White/Hernandez* cases are opposing the *Acosta/Pike* settlements on the grounds that those settlements represent an abuse of the class action mechanism as a matter of procedure, ethics and substance.

STATEMENT OF FACTS

A. The Allegations of the *White/Hernandez* Cases

Plaintiffs, Terri N. White, Jose Hernandez, Robert Radcliffe, Chester Carter, Maria Falcon, and Alex Gidi, are individual consumers who have previously filed petitions for bankruptcy pursuant to Chapter 7 of the U.S. Bankruptcy Code. Plaintiffs have obtained orders of discharge, which, under federal bankruptcy laws, fully and completely discharge all statutorily dischargeable debts¹ incurred prior to the filing of the petition, except for those that have been: (1) reaffirmed by the debtor in a reaffirmation agreement; or (2) successfully challenged by one of his creditors in a related adversary proceeding. Yet, in the cases of all six plaintiffs, the credit reporting agencies have issued credit reports which erroneously report the discharged debts as due and owing.

The *White/Hernandez* Plaintiffs have brought class actions under the Fair Credit Reporting Act, 15 U.S.C. §§ 1601 *et seq.* (the "FCRA") and the California Consumer Credit Reporting Agency Act, CAL. CIV. CODE § 1780, *et seq.*

¹ Discharged debts typically encompass a number of different debts, including credit card, mortgage, back rent, medical, bank loans, and utility debts. They ordinarily do not extend to certain discrete, statutorily non-dischargeable debts, such as alimony, domestic support obligations, or student loans.

1 (“CCRAA”) on behalf of a nationwide class of consumers against the three major
 2 credit reporting agencies, Trans Union Company (“Trans Union”) and Equifax
 3 Information Services, Inc. (“Equifax”) and Experian Information Solutions, LLC.²
 4 They seek damages and to stop defendants from issuing credit reports that falsely
 5 report discharged debts as “due and owing,” thereby preventing Plaintiffs from
 6 enjoying the “fresh start” that the bankruptcy laws promise. Plaintiffs seek to
 7 represent the class of millions of consumers nationwide who have filed petitions for
 8 bankruptcy pursuant to Chapter 7 of the U.S. Bankruptcy Code, obtained orders of
 9 discharge, but whose credit reports still show the discharged debts as due and
 10 owing. The named defendants are national repositories for consumer credit
 11 information engaged in the credit reporting business of issuing credit reports to
 12 third parties.

13 The *White/Hernandez* Plaintiffs allege that Defendants have violated the
 14 FCRA by failing to follow “reasonable procedures to assure maximum possible
 15 accuracy” in its credit reporting. 15 U.S.C. § 1681e(b); *see* CAL. CIV. CODE
 16 §1785.14(b). Instead, defendants employ procedures that produce twice as many
 17 erroneous reports than they do accurate ones. Plaintiffs allege that through the
 18 computerized court reporting service known as PACER, Defendants already obtain
 19 access to each and every discharge order issued by a U.S. Bankruptcy Court in
 20 Chapter 7 proceedings. Moreover, by means of an automated search in PACER,
 21 Defendants can easily determine whether a debt has been reaffirmed or successfully
 22 challenged.

23 Yet, instead of reconciling the firsthand information it has already obtained
 24 directly from the records of the bankruptcy courts or using available services with
 25 PACER and the information in their own databases to retrieve discharged debt

26
 27 ² A copy of the Second Amended Complaint against Trans Union is attached hereto
 28 as Exhibit A. This statement of facts concerns primarily Trans Union and Equifax,
 and not Experian, because there is no proposed settlement with Experian at this
 time.

1 information, Defendants inexplicably rely solely on consumers' creditors to
2 voluntarily update the status of their accounts with consumers who are the
3 beneficiaries of a Chapter 7 discharge order. These creditors have no statutory
4 obligation to update past reporting and what duty they have to ensure an updated
5 account status in future reporting is effectively limited as there is no private cause
6 of action against creditors for such neglect or misconduct. 15 U.S.C. §1681s-2(c).

7 The expected and obvious result is that Defendants systematically over-
8 report debts as due and owing that have been discharged in bankruptcy.³ Indeed, a
9 survey of 960 Credit Reports issued by Trans Union showed an error rate of 64
10 percent. A survey of approximately 900 Credit Reports issued by Equifax showed
11 an error rate of about 66% percent. The average number of falsely listed debts was
12 between three and four per report regarding these Defendants and, in some cases,
13 the number of such errors was ten or more.

14 Defendants know or should know that the information creditors furnish
15 regarding the status of pre-bankruptcy debts is highly unreliable and that their
16 procedures for reporting such debts fail to assure "maximum possible accuracy."
17 Even when placed on notice of errors in the Credit Reports, these Defendants
18 continue to falsely record the status of consumers' debts. Rather than fulfill its
19 statutory obligation to reinvestigate and accurately report debts, Trans Union
20 continues to falsely report these debts in approximately seventeen percent of the
21 cases and Equifax falsely reports these debts in approximately twenty-two percent
22 of the cases. Plaintiffs therefore claim that defendants do so willfully and in
23 conscious disregard of plaintiffs' statutory right to protection from the transmission
24 of inaccurate information. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329,
25 1333 (9th Cir. 1995). Yet, Defendants continue to employ reporting procedures
26 that wholly fail to ensure any accuracy, let alone "maximum possible accuracy."

27 ³ The *White/Hernandez* team has created a database of over 1,000 individuals who
28 have filed Chapter 7 bankruptcy. This database identifies the inaccuracies in these
individuals' post-discharge credit reports.

1 15 U.S.C. § 1681e(b); and CAL. CIV. CODE §1785.14(b).

2 In each case, Plaintiffs' credit ratings have been adversely affected by
3 Defendants' erroneous Credit Reports. As a direct consequence of Defendants'
4 inadequate and inaccurate initial reporting procedures and inadequate
5 reinvestigations, Plaintiffs have been effectively denied the fresh start to which they
6 are legally entitled under the U.S. Bankruptcy Code.

7 Millions of consumers nationally are potentially affected by the Defendants'
8 standardized, systemic practices. Defendants themselves have provided Federal
9 and State officials with a chart "setting forth a reasonable estimate based upon
10 Defendants' records, of the class member data" and identifying 14,019,000
11 (rounded to the nearest thousand and broken down on a state by state basis)
12 consumers with a bankruptcy discharge on a Trans Union file and 11,053,000 on an
13 Equifax file.⁴

14 **B. The *Acosta* and *Pike* California-Only State Court Class Action**
15 **Cases.**

16 On May 12, 2003, the *Acosta v. Trans Union* action was filed by attorney
17 Peter Recchia in the California Superior Court (Orange County) on behalf of a class
18 of California-only residents.⁵ It alleges that Trans Union's practices for reporting
19 the status of debts discharged in bankruptcy violates California law, specifically
20 the CCRAA. During the three years that the state court *Acosta* case has been
21 pending, there has been no ruling on class certification, two depositions of Trans
22

23 ⁴ Attached as Exhibit B is Defendants' November 22, 2006, CAFA Notice to
Federal and State Officials.

24 ⁵ Peter Recchia is an attorney licensed in the State of California. The California
25 Bar has disciplined Recchia three times, with the latest disciplinary proceeding
26 occurring in 1997. In February 1997, while serving a five-year probation as the
27 result of a 1995 disciplinary proceeding, Recchia received a one-year stayed
28 suspension for carrying a firearm into the Orange County courthouse. Recchia also
pled guilty to a misdemeanor regarding this firearm. Recchia's 1995 five-year
probation concerned a failure to supervise a law student who worked for him and
represented a client. Recchia's 1994 five-year probation resulted from conduct the
California Bar described as "multiple acts of concealment and dishonesty."

1 Union witnesses, a single declaration from a Trans Union employee relating solely
2 to reinvestigation procedures, and the production of documents relating solely to
3 the credit history of named plaintiffs.

4 On October 14, 2005, Mr. Recchia filed the *Kathryn Pike v. Equifax* action
5 also in the California Superior Court (Orange County), likewise brought on behalf
6 of a California class and likewise limited to claims under the CCRAA.⁶ There has
7 been no motion practice and no discovery in the *Kathryn Pike* case, whatsoever.

8 In both cases, the pleadings reflect a deliberate decision to limit the class to
9 California residents and limit claims to the CCRAA. In both cases, efforts were
10 also made to keep the cases out of federal court: (a) when *Acosta* was removed on
11 June 20, 2003 to the Central District of California (Judge Stotler), plaintiffs
12 successfully sought remand back to state court, where it has been pending since
13 December 17, 2003 (albeit now stayed pending a decision on approval of the
14 *Acosta* settlement discussed herein); the *Kathryn Pike* case was originally filed in
15 state court, removed to federal court, and then dismissed; only subsequently was the
16 other *Kathryn Pike* case filed (*i.e.*, the case filed on October 14, 2005) again in state
17 court, but again removed to the District Court for the Central District of California,
18 where it remains.

19 **C. The Early Proposed Settlements In The State Court *Acosta* Case.**

20 On two occasions in 2003, plaintiffs' counsel, Mr. Recchia, attempted to
21 settle the state court *Acosta* case – not on behalf of the class he sought to represent,
22 but on behalf of his individual client.⁷ First, on June 24, 2003, Recchia, on behalf

23 ⁶ The *Kathryn Pike* class case, which is not be confused with an individual case that
24 Mr. Recchia filed on behalf of her husband on June 24, 2004, was removed to
25 federal court on November 30, 2005. *Dennis Pike v. Equifax*, 04 CC07828 is a
26 California Superior Court case filed on July 21, 2004, and involves Dennis Pike's
claims arising from his joint Chapter 7 bankruptcy with Kathryn Pike. Recchia
dismissed the *Dennis Pike* case on November 22, 2005.

27 ⁷ Besides the *Acosta* and *Pike* cases, Mr. Recchia's class action experience appears
28 to be limited to three class action cases in the Central District, all of which
originated in state court and none of which were certified. (The following three
Recchia class action cases were identified through a PACER search: *Leesa*

1 of Mr. Acosta only, tried to settle the case for \$250,000 and for Trans Union's
 2 "assurances" that it would comply with the California Civil Code in its "future
 3 dealings with California consumers consistent with the injunctive relief prayed for
 4 in Recchia's complaint."⁸ Two months later, on August 18, 2003, Mr. Recchia's
 5 offer to abandon the class and reach an individual settlement went down to
 6 \$75,000.⁹

7 **D. The Genesis of the *White/Hernandez* Cases.**

8 Beginning in 2004, New York City bankruptcy lawyer Charles Juntikka
 9 began confronting the real world effects of the credit reporting agencies' systematic
 10 erroneous reporting of debts discharged in bankruptcy. Mr. Juntikka, whose
 11 practice has involved the representation of tens of thousands of Chapter 7 debtors,
 12 began bringing federal FCRA cases against the credit reporting agencies, seeking
 13 damages for his clients. Despite his bringing over 40 of such actions, the erroneous
 14 reporting persisted and the management of the litigation proved burdensome. Mr.

15 *Westwood, et al. v. Equifax, et al.*, 03-CV-00720; *Sullivan v. The Ritz-Carlton*
 16 *Hotel, et al.*, 03-CV-01051; and *Sullivan v. Fair Isaac Corporation, et al.*, 06-CV-
 17 00207.) In each of these three cases, Mr. Recchia named and promoted his own
 18 employees as adequate class representatives. (One such employee was Gregory
 19 Sullivan, who is a disbarred California attorney.) All three of these cases were
 20 dismissed. Mr. Recchia voluntarily dismissed one of them, a case against Ritz-
 21 Carlton, case on January 25, 2006, ninety days after the Ritz-Carlton filed a
 22 counterclaim for abuse of process against both Mr. Recchia and one of his
 23 employees who has served as class representative. Though the Ritz-Carlton
 24 accused Mr. Recchia and Sullivan of, among other things, failing to have a
 25 "recognizable claim" and having engaged in "extortion," Mr. Recchia declined to
 26 fight these charges or even file an answer. Recchia also has experience as a class
 27 action defendant. On April 6, 2006, in *Rannis v. Recchia*, ED CV 06-00373,
 28 Recchia and his business, Fair Credit Lawyers, Inc., were sued as defendants in a
 class action case alleging that Recchia violated federal and state law concerning
 credit repair services. (Mr. Recchia's advertisement in the San Bernardino "Penny
 Saver" which stated "BAD CREDIT REPORT?....Improve Your Credit Score
 Now! Don't Delay (800) 250-3252.") On November 28, 2006, Recchia was
 deposed in this litigation and confirmed that Jose Acosta and Kathryn Pike came to
 Recchia through his Fair Credit Lawyers advertisement. As a result, at least these
 named class representatives and maybe others in the *Acosta* case are members of a
 putative class in a class action against their own class action counsel, Peter Recchia.

⁸ Attached as Exhibit C is the June 24, 2003 letter from Mr. Recchia to Trans
 Union's counsel of record, Crowell & Moring LLP.

⁹ Attached as Exhibit D is an August 18, 2003 transcript of Recchia's voicemail to
 Trans Union's counsel.

1 Juntikka obtained over 1,500 credit reports for his clients (at his own expense) from
 2 each of the credit reporting agencies and determined that there were twice as many
 3 inaccurate reports as accurate ones. Mr. Juntikka therefore sought class counsel to
 4 address the problem through the use of the more effective and superior class action
 5 mechanism. Mr. Juntikka, and his colleague Daniel Wolf, associated with Lieff,
 6 Cabraser, Heimann & Bernstein, LLP.

7 In the meantime, a leading FCRA practitioner, Leonard Bennett, was also
 8 concerned with the ongoing effects of the credit reporting agencies continued
 9 failure to address the defective reporting of debts discharged in bankruptcy.
 10 Mr. Bennett associated with Caddell & Chapman, a leading Texas class action trial
 11 firm (and their colleague Mitchell Toups).

12 The *Hernandez* case was filed on October 3, 2005, in the Northern District of
 13 California by the Caddell team. The *White* matter was filed on November 2, 2005,
 14 directly in the Central District by the Lieff team. Hernandez was transferred at the
 15 *White/Hernandez* plaintiffs' initiation to the Central District of California. The
 16 cases are consolidated for pretrial and trial purposes before the Honorable David O.
 17 Carter who has noted in written decisions that the *White/Hernandez* plaintiffs'
 18 counsel have been "working cooperatively."

19 **E. After the *White/Hernandez* Cases Are Filed, Trans Union**
 20 **Approaches Plaintiffs' Counsel in The State Court *Acosta* Case**
 21 **Requesting a Demand For Settlement In Order To Engineer A**
 22 **Reverse Auction Settlement In Which The *Acosta/Pike* Plaintiffs'**
 23 **Counsel Willingly Participate.**

24 In January 2006, after the *White/Hernandez* cases were filed, Trans Union
 25 requested a settlement demand from the *Acosta* plaintiffs.¹⁰ A declaration from one
 26 of the *Acosta* plaintiffs' counsel, Lee Sherman, describes what can only
 27 characterized as an unabashed effort by Trans Union to engineer a reverse auction.
 28 First, as mentioned, the defendant Trans Union requested the settlement demand.

¹⁰ Declaration of Lee Sherman in Support of Plaintiffs' Opposition to Motion to Consolidate Related Cases ("Sherman Decl."), ¶ 9, attached hereto as Exhibit E.

1 Second, Mr. Sherman notes that counsel from Stroock & Stroock & Lavan
2 LLP, a firm which had not been involved at all in the *Acosta* case, but which had
3 appeared for Trans Union in *White/Hernandez*, approached him on behalf of Trans
4 Union expressly acknowledging the existence of the federal cases.¹¹

5 Third, Mr. Sherman notes that the *White/Hernandez* cases “posed an obstacle
6 to the settlement of this matter in that Trans Union would not settle the *Acosta* case
7 unless it included a settlement of all claims including those based on the Federal
8 Fair Credit Reporting Act asserted in [*White/Hernandez*].”¹²

9 Fourth, Mr. Sherman describes the method by which this “obstacle” could be
10 overcome:

11 “During mediation, various options to deal with this issue
12 were discussed and ultimately, Justice [John K.] Trotter
13 [Ret.] suggested that in order to facilitate settlement, the
14 parties should consider a procedural framework for
15 settlement that included a settlement of all claims, a stay
16 of the *Acosta v. Trans Union, LLC California* action and
17 the filing of a new Federal case that would be filed in
18 conjunction with a notice of related cases to the existing
19 Federal cases, so that Judge Carter could oversee the
20 approval process for this settlement since he was
21 presiding over the newly filed and consolidated similar
22 Federal cases [i.e., the *White/Hernandez* matters].”¹³

23 Justice Trotter instructed Mr. Sherman to file a declaration from Justice
24 Trotter correcting this statement.¹⁴ Justice Trotter clarified that the procedural
25 framework described above was not his suggestion, but rather an idea that
26 originated by Trans Union that he simply communicated to the *Acosta* plaintiffs.¹⁵

27 ¹¹ Id., ¶ 10.

28 ¹² Id., ¶ 16.

¹³ Id., ¶ 17.

¹⁴ Mr. Sherman did not file this declaration with the Court until October 4, 2006, fifteen days after Judge Trotter signed his declaration and only after Judge Trotter insisted that Mr. Sherman file this declaration to correct the Court’s record. Even then, Mr. Sherman filed the declaration without identifying for the Court the reason for it.

¹⁵ Declaration of John K. Trotter, Ret. Regarding Motion to Consolidate Related Cases (“Trotter Decl.”), ¶¶ 5-6, attached hereto as Exhibit F. The Sherman Declaration repeats the assertion that Justice Trotter devised this procedure in three

1 Fifth, Mr. Sherman acknowledges that the filing of the federal *Acosta* case
 2 would be solely to effect a settlement of the federal claims that were an “obstacle”
 3 to settling the state court *Acosta* case.¹⁶ In the event the Court does not approve the
 4 settlement, Mr. Sherman has agreed in advance to drop his federal claims and
 5 abandon his representation of the nationwide class.¹⁷

6 Moreover, the *Acosta* plaintiffs and Trans Union proceeded to mediation to
 7 the deliberate exclusion of the *White/Hernandez* plaintiffs. Trans Union appeared
 8 for two status conferences in *White/Hernandez* while the *Acosta* mediation was
 9 pending, but never disclosed in Court, or during the negotiation of the
 10 *White/Hernandez* litigation schedules, the existence of the *Acosta* case or its
 11 mediation.¹⁸ On the other hand, both *Acosta* plaintiffs’ counsel and Trans Union’s
 12 counsel discussed the status of the *White/Hernandez* cases. Mr. Recchia appeared
 13 at one of the *White v. Trans Union* status conferences during the time he was
 14 mediating with Trans Union, but failed to reveal to the Court or the *White* plaintiffs
 15 the existence of the ongoing settlement discussions. An email from Trans Union’s
 16 counsel to Mr. Sherman that day, Trans Union’s counsel, though acknowledging
 17 that Mr. Recchia may have already informed Mr. Sherman, reports on the status
 18 conference with Judge Carter (noting that the Court would set a comprehensive
 19 schedule at the next conference).¹⁹ In reply, Mr. Sherman states:

20 separate paragraphs, concluding that regarding the August 7, 2006, mediation, the
 21 *Acosta* “parties adopted Justice Trotter’s suggestion.” Sherman Decl., ¶ 19. Justice
 22 Trotter’s declaration states that this was not his suggestion.

23 ¹⁶ Sherman Decl., ¶ 20.

24 ¹⁷ Id.

25 ¹⁸ On April 3, 2006—two months after soliciting a settlement demand from *Acosta*
 26 plaintiffs’ counsel, and one month after Trans Union’s first mediation session,
 27 Trans Union’s counsel, Julia B. Strickland, signed a *White* Rule 26(F) Joint Report
 28 which included a statement that “to date, no settlement discussions have taken
 place, and the parties believe that such discussions are premature....” See April 3,
 2006, Rule 26(f) Joint Report, ¶ 10.

¹⁹ Email dated April 24, 2006, from Stephen J. Newman (a lawyer for Trans Union)
 to Mr. Sherman within the April 28, 2006, email string, attached hereto as
 Exhibit G.

1 . . . yes, Peter [Recchia] filled me in. . . in discussing
 2 today's business [in *White*] with Peter [Recchia] a though
 3 occurred to me: would it be better/easier for us to simply
 amend Pike to add T/U as a defendant there, rather than
 filing an entirely new Complaint?²⁰

4 Again on June 6, 2006, Trans Union's counsel emails Mr. Sherman to inform
 5 him of the continuation of the *White* status conference.²¹ Mr. Sherman replies:

6 I had not heard, but thank you for the update. Clearly,
 7 this is good news to us and fits with our scheduling.
 However, I remain somewhat concerned about the No.
 Cal case [i.e., *Hernandez*].²²

8 Mr. Newman responds to that concern by informing Mr. Sherman that
 9 *Hernandez* has been transferred from the Northern District to the Central District.²³

10 In sum, Mr. Sherman's declaration reveals that Trans Union solicited a
 11 settlement demand from Acosta only after the *White/Hernandez* cases were filed,
 12 that Acosta's counsel was then approached by counsel for Trans Union in the
 13 *White/Hernandez* cases, that *Acosta* plaintiffs' counsel then willingly structured a
 14 settlement and procedure designed to resolve federal claims alleged in
 15 *White/Hernandez* that were never raised in *Acosta* and to resolve claims on behalf a
 16 consumers outside California who were not putatively included in *Acosta*. All this
 17 was done to the exclusion of the *White/Hernandez* plaintiffs' counsel and kept
 18 secret from the Court until a Memorandum of Understanding was executed among
 19 counsel in *Acosta*.

20 **F. The Evolution Of the *Acosta/Pike* Settlements.**

21 As mentioned above, in 2003, Trans Union rejected two settlement demands
 22 made by Mr. Recchia on behalf of the named plaintiffs in the state court *Acosta*
 23 case.²⁴ At some point thereafter, Mr. Recchia associated with Mr. Sherman.

24 ²⁰ *Id.*

25 ²¹ Email dated June 6, 2006, from Mr. Newman to Mr. Sherman, within the June 6,
 26 2006, email string, attached hereto as Exhibit H.

27 ²² *Id.*

28 ²³ *Id.*

²⁴ As noted above, Mr. Recchia's demands were first for \$250,000 and then

1 On January 20, 2006, Mr. Sherman sent the first settlement demand in
 2 response to the invitation of Trans Union's counsel. The demand included a
 3 modification of Trans Union's practices²⁵ and an \$800 payment to each class
 4 member who submitted a claim form. With regard to this demand, Mr. Sherman
 5 explained that:

6 Any class member that does not opt out of the settlement
 7 and does not timely submit a valid claim form will be
 8 bound by the settlement and release agreement, but will
 9 not be eligible to receive the payment from Trans
 10 Union.²⁶

11 Therefore, Mr. Sherman stated:

12 As you are no doubt aware, the claims made element of
 13 this proposed resolution is a significant benefit to Trans
 14 Union and would likely allow Trans Union to resolve this
 15 matter for a small fraction of its total exposure.²⁷

16 Indeed, Mr. Sherman stated at the outset that, "[c]ritically, Plaintiff is willing to
 17 allow the settlement to proceed on a claims made basis."²⁸

18 For three years, Trans Union had rejected Acosta's settlement offers, which
 19 reached a low of \$75,000, and no mediations were scheduled. However, after the
 20 *White/Hernandez* cases were filed, Trans Union and the *Acosta* plaintiffs proceeded
 21 to several mediation sessions.

22 Though there is some suggestion in the record that Equifax, the defendant in
 23 the *Kathryn Pike* case, may have begun discussing settlement with Acosta
 24 plaintiffs' counsel earlier,²⁹ on July 14, 2006, Mr. Sherman sent Equifax's counsel a
 25 \$75,000.

26 ²⁵ Eventually, the Sherman/Recchia team would enter into a memorandum of
 27 Understanding ("MOU") with Trans Union that provided no injunctive relief, other
 28 than Trans Union's promise to use its "best efforts."

²⁶ Letter dated January 20, 2006, from Lee Sherman to Trans Union, at 1, attached
 hereto as Exhibit I.

²⁷ *Id.*, at 2.

²⁸ *Id.*, at 1.

²⁹ For example, there are emails to and from counsel for Trans Union and
 Mr. Sherman during June 2006, inquiring as to whether Equifax will be appearing

1 letter forwarding his PowerPoint presentation made during the Trans Union
2 mediation.³⁰ Apparently, Equifax did end up appearing at an August 1, 2006,
3 mediation session with the *Acosta* parties.

4 On August 14, 2006, *Acosta* plaintiffs' counsel (i.e., Mr. Recchia,
5 Mr. Sherman, and Gino Pietro) appeared at a *White/Hernandez* status conference
6 and announced that plaintiffs in *Acosta* had entered into a Memorandum of
7 Understanding ("MOU")³¹ with Trans Union in which they had settled all of the
8 class-wide claims being asserted in the *White/Hernandez* cases against that
9 defendant. At the status conference, the Sherman/Recchia Team stated that, at
10 Trans Union's request and to effect the settlement, plaintiffs in *Acosta* had
11 (1) prepared a federal complaint on behalf of a nationwide class which they
12 intended (and did) to file later in the day; and (2) included additional federal claims
13 in their federal complaint, to facilitate a forced disposition of all pending federal
14 claims. Mr. Sherman made an oral motion to stay *White/Hernandez*, which was
15 denied. Until this August 14, 2006, status conference, *White/Hernandez* plaintiffs'
16 counsel was unaware of the *Acosta* case.

17 The MOU provides for virtually no injunctive relief at all. First, it provides
18 no injunctive relief whatsoever to the members of the class, e.g., it did not require
19 Trans Union to correct errors in the existing credit files of the class members.
20 Instead, the MOU provided for just future injunctive measures, but even there,
21 Trans Union gave only a vague commitment to use its "best efforts."³² The
22 economic relief provided for in the MOU arbitrarily excluded approximately 70%
23 of the class, and for the others entitled to economic relief, most would receive only
24 at one of the upcoming mediation sessions.

25 ³⁰ Letter dated July 14, 2006, from Mr. Sherman to Kali Wilson Beyah (an attorney
26 for Equifax), attached as Exhibit J.

27 ³¹ See MOU provided to *White/Hernandez* plaintiffs' counsel, attached as
28 Exhibit K.

³² *Id.* at

1 a free credit report (to which they are already entitled as a matter of law).³³ In
 2 return, Trans Union would obtain a complete release and the Sherman/Recchia
 3 team would be entitled to \$3.485 million in fees.

4 In the MOU, the Sherman/Recchia team expressly disclaims any intention to
 5 represent the nationwide class unless it is for purposes of effecting the settlement.
 6 The MOU provides on page 12 that in the event "Settlement is not finally approved,
 7 the new claims asserted in the Federal Action will be dismissed without
 8 prejudice."³⁴ It also provides on page 2 for a return to the "*status quo ante*,"
 9 whereby the federal case is to be dismissed, and the state court *Acosta* action will
 10 be resumed in its original California-only claims, California-only class state.

11 At the August 14, 2006, status conference, after the Sherman/Recchia team
 12 had circulated the MOU, the Court suggested that all parties in *White/Hernandez*
 13 and *Acosta/Pike* proceed to a further mediation before Justice Trotter as a process
 14 for pursuing a global settlement. The parties agreed, and soon thereafter scheduled
 15 a mediation with Justice Trotter for September 14, 2006.

16 On August 23, 2006, prior to the mediation, Mr. Sherman offered to the
 17 Lieff/Caddell team that the lawyers split, 50/50, their interests in the litigations
 18 against the three credit reporting agencies (even though the Sherman/Recchia team
 19 had no case on file against Experian). Mr. Sherman told Mr. Sobol that in return
 20 for the Lieff/Caddell team not disputing the terms of the Trans Union settlement,
 21 the Sherman/Recchia team would retain the Trans Union case (and fees), permit the
 22 Lieff/Caddell team to pursue their case against Experian, and the teams would split
 23 the Equifax case. (Mr. Sherman later repeated this offer to both Mr. Caddell and
 24 Mr. Sobol.) Mr. Sherman's fee split proposal was made without regard to how
 25 relief among the credit reporting agencies would be obtained in the necessary,
 26 meaningful, standardized manner. In any event, the Lieff/Caddell team rejected the

27 ³³ Id. at

28 ³⁴ Id. at ¶ 4, p. 12.

1 offer outright because they would not countenance the defective Trans Union
2 settlement.

3 On September 1, 2006, prior to the global mediation, the Sherman/Recchia
4 Team, independently and without apprising the Lieff/Caddell team, contacted
5 Equifax and provided it with a settlement demand.³⁵ By September 6, 2006,
6 Sherman informed his expert, Prof. Ronald Mann, that Sherman appeared to have a
7 settlement "possibly [with] Equifax, though that is not finalized yet."³⁶ As a result,
8 it appears that the Sherman/Recchia team reached a settlement in principle with
9 Equifax in advance of the global mediation, disabling any possibility of a global
10 settlement as urged by the Court.

11 The Sherman/Recchia team's September 1, 2006, demand to Equifax was
12 silent with respect to injunctive relief terms, but increased the dollar amounts
13 available under the claim matrix by 50 percent. This settlement demand contained
14 more than just the terms of relief to the class, it also included a demand for \$5.985
15 million in attorneys' fees (i.e., an additional \$2.5 million in attorneys' fees from
16 Equifax, boosting the Sherman/Recchia team's total attorney fees by 72%).³⁷

17 Unaware of the apparent deal between the Sherman/Recchia team and
18 Equifax, the Lieff/Caddell team attended the September 14th mediation with Justice
19 Trotter. During the mediation, the Lieff/Caddell team informed the
20 Sherman/Recchia team of certain serious defects in the proposed settlement and
21 suggested that the two teams work together to come up with a better solution for the
22 putative class. The Sherman/Recchia Team rejected that proposal.

23 Nonetheless, as a result of the Lieff/Caddell team's contribution at the
24 mediation, the terms of the MOU were improved (though they remain fatally

25 ³⁵ Email dated September 1, 2006, Lee Sherman to Equifax's counsel, attached as
26 Exhibit L.

27 ³⁶ Email dated September 6, 2006, from Mr. Sherman to Prof. Ronald Mann,
attached as Exhibit M.

28 ³⁷ Exhibit L, the September 1, 2006 email from Sherman to Equifax's counsel.

1 flawed). The Lieff/Caddell team demonstrated how all injunctive relief under the
 2 MOU was prospective, and thus failed to provide automatic review of the data
 3 collected for the class members' credit files. This relief, dubbed "scrubbing the
 4 files," during the mediation, was central to providing a true benefit to class
 5 members. The Sherman/Recchia team publicly stated that they disagreed that the
 6 MOU failed to provide such relief, revealing their own misunderstanding of the
 7 very MOU they had negotiated. Defendants Trans Union and Equifax, on the other
 8 hand, recognized how this shortcoming could pose a formidable barrier to court
 9 approval of the settlement. As a result of the Lieff/Caddell team pointing out this
 10 deficiency, ultimately Trans Union and Equifax supplemented the MOU to include
 11 injunctive relief that would correct existing data used in assembling the actual class
 12 members' credit files.³⁸

13 During the course of the September 14th mediation, Equifax announced that
 14 it reached an agreement with the Sherman/Recchia team. Equifax essentially
 15 agreed to the demand contained in the Sherman/Recchia team's September 1, 2006,
 16 demand, except that it agreed a lesser amount of attorneys' fees totaling \$2,015,000
 17 (the Sherman/Recchia team had included a \$2.5 million fee demand within the
 18 substantive demand). This raised the total fee award to the Sherman/Recchia team
 19 to \$5.5 million.

20 Ultimately, the economic relief agreed to in the supplemental MOU is less
 21 advantageous for the class than that provided in the original MOU. Although by
 22 definition, each defendant has injured a separate, identifiable class of consumers,³⁹
 23 the supplemental MOU and the final Settlement Agreement treats, for purposes of
 24

25 ³⁸ See Exhibit L, the September 1, 2006 email from Sherman to Equifax's counsel.
 26 See also the September 14, 2006 Supplement to the MOU with the revision to the
 injunctive relief described in paragraph 1(b), attached as Exhibit N.

27 ³⁹ The "Settlement Class" as defined in the ultimate Settlement Agreement includes
 28 two separate classes with two separate claims—"all consumers...for whom Trans
 Union and/or Equifax maintain a file." See Settlement Agreement at ¶ 1.31,
 attached hereto as Exhibit O.

1 providing relief, the two separate classes as a single class. With the addition of
2 Equifax to the settlement, the MOU was supplemented to “enhance by 50%” the
3 “total economic relief” to the class (as reflected in the damage matrix), rather than
4 *doubling* the relief. Thus, the Trans Union class actually receives less from Trans
5 Union under the supplemented MOU than it did under the original MOU. Not only
6 is the settlement enhanced by only one-half the potential economic relief as
7 originally committed by Trans Union, but Equifax and Trans Union each pay *less* in
8 potential economic relief than Trans Union agreed to pay under the original
9 MOU.⁴⁰ As the original MOU presumably already reflected heavy discounting for
10 litigation risk, there appears absolutely no basis for this further discounting.

11 Trans Union, not surprisingly, accepted these less costly settlement terms
12 along with Equifax, as reflected in the Settlement Agreement submitted for
13 preliminary approval. In addition, both Equifax and Trans Union also agreed to the
14 augmented injunctive relief negotiated by the Lieff/Caddell team. On
15 September 29, 2006, the Sherman/Recchia team sought to effectuate settlement
16 under these terms by amending their complaint in the *Kathryn Pike* case to include,
17 for the first time, federal claims and a nationwide class.

18 The record indicates that all during the mediation process and through to the
19 time of producing the MOU in open Court, the Sherman/Recchia team neglected to
20 involve or seek consultation with any experts. From what the record indicates, no
21 expert assisted in drafting Mr. Sherman’s January 20, 2006 settlement demand, nor
22 did any experts attend the Sherman/Recchia team’s mediation sessions with Trans
23 Union. Rather, the Sherman/Recchia team sought only to retain experts after two
24 events occurred: (1) the MOU was in hand and needed a rubber-stamp of approval;
25 and (2) the Sherman/Recchia team had received Trans Union’s commitment to pay

26 ⁴⁰ For example, under the MOU, Trans Union agreed to provide a free credit report,
27 score and \$50 for a score increase between 51 and 100 points in the Subprime to
28 Subprime category. Under the new damage matrix, a Trans Union/Equifax class
member in this category receives \$75, so Trans Union now will only pay this class
member \$37.50.

1 up to \$40,000 of the *Acosta* plaintiffs' experts' fees.⁴¹
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27 ⁴¹ This \$40,000 commitment by Trans Union to pay the Sherman/Recchia team's
28 expert fees was originally in paragraph 9(a) of the MOU and now has been raised to \$70,000 and included in paragraph 9.2 of the Settlement Stipulation. Trans Union also agreed to advance the Sherman/Recchia team's mediation fees.

EXHIBIT LIST

<u>Exhibit</u>	<u>Document</u>
A.	Second Amended Consolidated Complaint against Trans Union.
B.	Defendants' November 22, 2006 CAFA Notice to Federal and State Officials.
C.	Letter dated June 24, 2003, from Peter L. Recchia to Trans Union's counsel.
D.	Transcription of voicemail message from Peter L. Recchia to Trans Union's counsel.
E.	Declaration of Lee Sherman in Support of Plaintiffs' Opposition to Motion to Consolidate Cases.
F.	Declaration of John K. Trotter, Ret. Regarding Motion to Consolidate Related Cases.
G.	April 24, 2006, email string between Lee Sherman and Stephen J. Newman.
H.	June 6, 2006, email string between Lee Sherman and Stephen J. Newman.
I.	Letter dated January 20, 2006, from Lee Sherman to Trans Union's counsel.
J.	Letter dated July 14, 2006, from Lee Sherman to Equifax's counsel.
K.	Memorandum of Understanding provided to Lief/Caddell team in court on August 14, 2006.
L.	Email dated September 1, 2006, from Lee Sherman to Equifax's counsel.
M.	Email dated September 6, 2006, from Mr. Sherman to Prof. Ronald Mann.
N.	September 14, 2006, Supplement to the Memorandum of Understanding.
O.	Settlement Agreement